TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 584

WALTER M. PIERCE, AS GOVERNOR OF THE STATE OF OREGON; ISAAC H. VAN WINKLE, AS ATTORNEY GENERAL OF THE STATE OF OREGON, AND STANLEY MYERS, AS DISTRICT ATTORNEY FOR MULTNOMAH COUNTY, STATE OF OREGON, APPELLANTS,

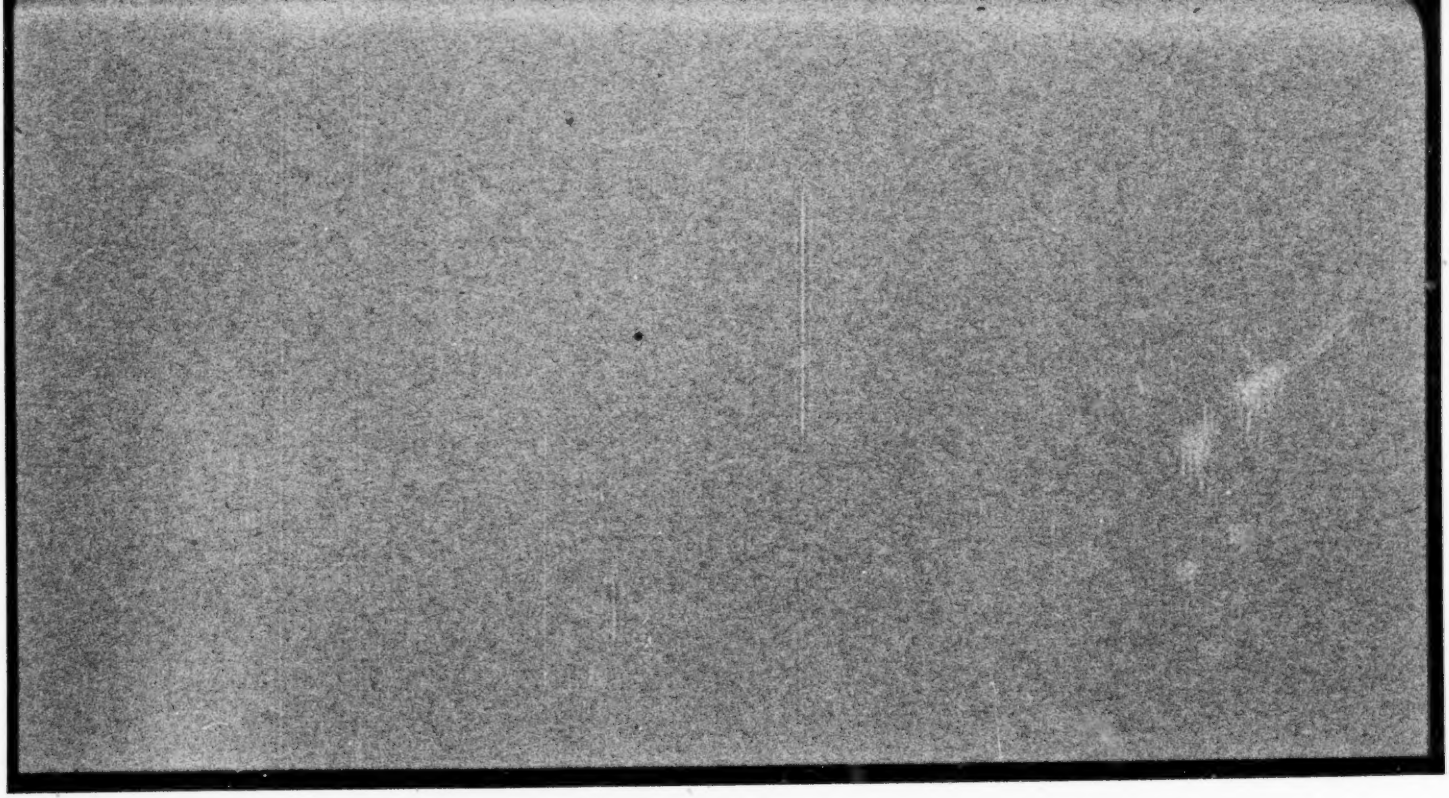
vs.

HILL MILITARY ACADEMY

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON

FILED AUGUST 14, 1924

(30,549)



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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPTEMBER 19, 1924

[fol. a] **IN UNITED STATES DISTRICT COURT, DISTRICT OF OREGON**

HILL MILITARY ACADEMY, a Corporation, Plaintiff and Appellee,

vs.

WALTER M. PIERCE, as Governor of the State of Oregon; ISAAC H. Van Winkle, as Attorney General of the State of Oregon, and Stanley Myers, as District Attorney for Multnomah County, State of Oregon, Defendants and Appellants

PRAYER FOR REVERSAL—Filed June 30, 1924

Come now Walter M. Pierce, as Governor of Oregon, Isaac H. Van Winkle, as Attorney General of Oregon, and Stanley Myers, as District Attorney of Multnomah County, Oregon, defendants and appellants, and pray the court for a reversal of the order and decree of injunction passed against them at the instance of the above named plaintiff and appellee in the District Court of the United States for the District of Oregon on the 31st day of March, 1924, which order and decree enjoined the enforcement of a statute passed by the people of Oregon under the initiative on the seventh of November, 1922, and found in the Session Laws for the year 1923 as chapter one of the General Laws of Oregon for 1923.

I. H. Van Winkle, Attorney General of Oregon; Willis S. Moore, Assistant Attorney General of Oregon; Stanley Myers, District Attorney for Multnomah County, Oregon, Solicitors for Defendants and Appellants.

[fol. b] Due service of the within Prayer for Reversal is admitted this 30th day of June, 1924.

John C. Veatch, Attorney for Plaintiff.

[fols. 1 & 2] CITATION—In usual form showing service on John C. Veatch; omitted in printing.

[fol. 3] [File endorsement omitted.]

[fol. 4] IN UNITED STATES DISTRICT COURT

[Title omitted]

AMENDED BILL OF COMPLAINT—Filed Dec. 17, 1923

Comes now Hill Military Academy, a corporation, plaintiff above named and by leave of court first had and obtained, files this, its amended bill of complaint and for cause of suit alleges as follows:

I

That heretofore, and on the 31st day of July, 1908, plaintiff filed its Articles of Incorporation, a copy of which is hereunto attached, marked "Exhibit A", and made a part hereof, in the office of the Secretary of State of the State of Oregon, paid its filing and annual license fee, as required by law, and on said day received from said Secretary of State a certificate of filing and recording articles of incorporation, which said certificate is numbered 12824, a copy of which is hereunto attached, marked "Exhibit B", and made a part hereof, and ever since said time has been and now is a private corporation, organized, incorporated and existing under the laws of the State of Oregon, and a citizen of said state, having its principal office and place of business at the City of Portland, in the county of Multnomah, State of Oregon, and, ever since said time, has been and now is engaged in the general business of owning, operating, and conducting, for profit, an elementary, college preparatory and military training school for boys between the ages of five and twenty-one years, at said City of Portland, That plaintiff has paid its cor-[fol. 5] poration tax to the State of Oregon for the current year and is now licensed by said State to conduct its said business as a private corporation.

II

That said school, so conducted by plaintiff, is divided into two departments, to-wit: the elementary and college preparatory departments. That said elementary department is divided into eight grades, corresponding to the eight grades of the public elementary schools of the State of Oregon, and said college preparatory department is divided into four grades or years, corresponding to the four grades or years of the public high schools of the State of Oregon; that the course of study in said elementary department, and in each grade thereof, conforms to the course of study prescribed by the State Board of Education of the State of Oregon, for the public elementary schools of said state, and for each grade thereof, from one to eight inclusive; that the course of study in said college preparatory department conforms to the course of study prescribed by said State Board of Education for the public high schools of said State. That the text books used in said school, so conducted by plaintiff, in both said elementary and college preparatory departments, are the same text books prescribed by said State Board of Education and used in the public elementary and public high schools of said state, and the hours and days of instruction and the length of school terms in plaintiff's said school are the same as in said public elementary and public high schools of said state. That plaintiff's said school is accredited to various colleges and universities of the United States and the graduates from the college preparatory department of plaintiff's said school enter said colleges and universities without examination. That in addition to said course of in-[fol. 6] struction and at other times than regular school hours prescribed by said State Board of Education, plaintiff's said school

offers its students instruction in military science and training under the supervision and control of an officer assigned to said school for that purpose by the War Department of the United States.

III

That it is a part of the business so conducted by plaintiff, as aforesaid, to take as students boys who have no homes or whose homes are situated at a distance from said City of Portland, and furnish said boys with board and lodging and home surroundings in addition to and in connection with said educational training aforesaid. That for the purpose of conducting its said business, plaintiff has acquired and now owns valuable property, both real and personal, consisting of school buildings, dormatories, armory, dwelling houses, laboratories, and furnishings at said City of Portland, and a summer school and recreation camp at the town of Long Beach, in the State of Washington, all of which is now in use by plaintiff in conducting said school. That said property and equipment is of the reasonable value of one hundred and twenty thousand ($120,000.00) Dollars. That a part of said property, of a value in excess of Forty Thousand ($40,000) Dollars is of no value whatsoever except for use in connection with said school, and the remainder of said property cannot be converted and made suitable for other purposes than for use in connection with said school at a cost of less than Twenty thousand dollars ($20,000.00).

That, in addition to said physical property, plaintiff's said business is of the reasonable value of one hundred thousand dollars ($100,000.00).

IV

That plaintiff conducts said school as aforesaid, for profit, and [fol 7] has no other business other than that of conducting said school and no income other than that derived from said school. That the average number of students attending said school is one hundred (100) and the average yearly fee charged for each student is eight hundred dollars ($800.00), making a gross yearly income of eighty thousand dollars ($80,000.00), and all of the physical property, both real and personal, hereinbefore mentioned, was acquired by plaintiff from the net profits derived from said school.

V

That a yearly average of more than forty per cent of said number of students attending said school are in the elementary department thereof and are between the ages of eight (8) and sixteen (16) years and have not completed the eighth grade in accordance with the provisions of the course of study prescribed for public schools in said State of Oregon. That a yearly average of more than forty per cent of the students attending the college preparatory department in said school have previously attended the elementary department of said school and have graduated therefrom into said college

preparatory department, and said college preparatory department depends largely for its patronage upon students who have attended said elementary department and graduated therefrom. That a yearly average of more than sixty per cent of said total number of students attending said school are placed therein by their parents and guardians for a period of more than one year. That the parents and guardians of more than seventy-five per cent of the total number of students attending said school reside within the State of Oregon.

VI

[fol. 8] That the net income derived by plaintiff from conducting said school is but a small percentage of said gross income and said school cannot be conducted at a profit with an average number of less than one hundred (100) students in attendance. That in order for plaintiff to conduct said school at a profit with an average number of one hundred (100) students in attendance, it is necessary for plaintiff to purchase and to enter into contracts for the purchase of large quantities of supplies and equipment several years in advance of the current year and to enter into contracts for the employment of teachers, matrons and other employees for terms of more than one year, and to plan and contract for improvements and alterations in its said buildings, plant and equipment, and generally to lay out and plan its said business and obligate itself for the payment of large sums of money in connection therewith several years in advance of the current year.

VII

That at the general election held in the State of Oregon, on the 7th day of November, 1922, there was submitted to the legal voters of said state a certain measure in words and figures, as follows:

"A Bill for an Act to Propose by Initiative Petition to Amend Section 5259, Oregon Laws, Compulsory Education

Be it enacted by the People of the State of Oregon:

Section 1. That section 5259, Oregon Laws be, and the same is hereby, amended so as to read as follows:

Sec. 5259. Children Between the Ages of Eight and Sixteen Years. Any parent, guardian, or other person in the State of Oregon, having control or charge or custody of a child under the age of sixteen years and of the age of eight years or over at the commencement of a term of public school of the district in which said child resides, who shall fail or neglect or refuse to send such child to a public school for the period of time a public school shall be held during the current year in said district, shall be guilty of a misdemeanor and each day's failure to send such child to a public school shall constitute a separate offense. Provided, that in the following cases, children shall not be [fol. 9] required to attend public schools.

(a) Children Physically Unable. Any child who is abnormal, subnormal, or physically unable to attend school.

(b) Children who have completed the Eighth Grade. Any child who has completed the eighth grade, in accordance with the provisions of the state course of study.

(c) Distance from school. Children between the ages of eight and ten years inclusive, whose place of residence is more than one and one-half miles, and children over ten years of age whose place of residence is more than three miles, by the nearest traveled road, from a public school; provided, however, that if transportation to and from school is furnished by the school district, this exemption shall not apply.

(d) Private Instruction. Any child who is being taught for a like period of time by the parent or private teacher such subjects as are usually taught in the first eight years in the public school, but before such child can be taught by a parent or a private teacher, such parent or private teacher must receive written permission from the county superintendent, and such permission shall not extend longer than the end of the current school year. Such child must report to the county school superintendent or some person designated by him at least once every three months and take an examination in the work covered. If, after such examination the county superintendent shall determine that such child is not being properly taught, then the county superintendent shall order the parent, guardian, or other person, to send such child to the public school the remainder of the school year.

If any parent, guardian or other person having control or charge or custody of any child between the age of eight and sixteen years, shall fail to comply with any provision of this section, he shall be guilty of a misdemeanor, and shall, on conviction thereof, be subject to a fine of not less than $5.00, nor more than $100, or to imprisonment in the county jail not less than two nor more than thirty days, or by both such fine and imprisonment in the discretion of the court.

This act shall take effect and be and remain in force from and after the first day of September, 1926."

That there was cast for said measure at said election a majority of the votes cast by legal voters and said measure, by reason of said election and the laws of the State of Oregon, applying thereto, is now a pretended law of said state.

VIII

That defendant Walter M. Pierce is the duly elected, qualified and acting Governor of the State of Oregon; that defendant Isaac H. Van [fol. 10] Winkle is the duly elected, qualified and acting Attorney General of the State of Oregon; and defendant Stanley Myers is the duly elected, qualified and acting District Attorney for Multnomah

County, in said State of Oregon, and each and all of said defendants are charged with the duty of enforcing the laws of said state.

IX

That said pretended law is void and violates and contravenes the Constitution of the United States and more particularly Section 10 of Article I of the Constitution of the United States, and Section I of Article XIV of the Amendments to the Constitution of the United States in that it deprives plaintiff of its property without due process of law, denies to plaintiff the equal protection of the laws and impairs the obligations of plaintiff's contracts.

X

That said defendants and each of them now publicly declare and publish that said pretended law is a valid law of the State of Oregon, and publicly declare and threaten that they and each of them will enforce said pretended law from and after the date it becomes operative by its terms.

XI

That by reason of said pretended law and defendants' threat to enforce the same when it becomes operative by the terms thereof, plaintiff's said business is now being destroyed and rendered valueless and plaintiff is now being deprived of its property rights therein; and plaintiff's said property is being depreciated in value and large percentage thereof rendered wholly valueless. That by reason of said pretended law and defendants' threat to enforce the same, parents and guardians are refusing to enter into contracts with plaintiff [fol. 11] for placing their sons and wards in said elementary department of said school and are withdrawing their sons and wards from said elementary department in said school and placing them in other schools of a like nature which are not threatened with destruction. That, by reason of said pretended law and defendants' threat to enforce the same, plaintiff is unable to enter into contracts for future supplies and equipment and for alterations, improvements and repairs in connection with said school, without which contracts plaintiff's said busines cannot be conducted at a profit, and plaintiff is unable to obtain loans from financial institutions and elsewhere to meet its future needs in conducting said business. That unless defendants are restrained from threatening to enforce said pretended law as soon as it becomes operative by the terms thereof, plaintiff will suffer an irreparable injury for which it has no plain, speedy or adequate remedy at law.

Wherefore, plaintiff prays that said pretended Law be declared to be unconstitutional and void and that this Honorable Court grant unto plaintiff an interlocutory writ of injunction enjoining and restraining defendants and each of them from publicly threatening to enforce said pretended law on and after September 1, 1926, and from

publishing and declaring that said pretended law is a valid law of the State of Oregon, and that upon the final hearing of this cause, said injunction be made perpetual and that plaintiff have such other and further relief as to the Court may seem equitable.

John C. Veatch, Attorney for Plaintiff.

[fol. 12] EXHIBIT "A" TO COMPLAINT

Articles of Incorporation of Hill Military Academy

Know all men my these presents, That Joseph A. Hill, Laura E. Hill, and J. W. Hill, being desirous of forming a corporation under the laws of the State of Oregon, have subscribed to the following articles of incorporation:

Article I

The name assumed by this corporation and by which it shall be known is Hill Military Academy.

Article II

The duration of the corporation shall be perpetual.

Article III

The business, objects and pursuit of this corporation shall be—

To conduct a military academy and school; and the corporation shall have the power and authority to purchase, own, acquire, lease, occupy and take possession of, sell, mortgage, hypothecate and pledge real and personal property, necessary, desirable or needed in the conduct of such school and academy;

And shall also have power and authority to employ teachers and all labor and assistance necessary in the conduct of such academy, fixing a course of study, appointing principles, superintendents and other persons to have charge of such school or academy;

And shall have power and authority to issue to the students who have completed the course of study prescribed by such school or academy, diplomas and certificates;

[fol. 13] And to do each and everything necessary or required to be done in the successful conduct of such school or academy.

Article IV

The principal office and place of business of the corporation shall be in the City of Portland, County of Multnomah, State of Oregon.

Article V

The capital stock of the corporation shall be the sum of one thousand dollars ($1,000.00) divided into ten (10) shares of the value of one hundred dollars ($100.00) each.

In witness whereof, we have hereunto subscribed our names to this and two other instruments of like tenor and date, at the City of Portland, Oregon, this 29th day of July, 1908.

Joseph A. Hill. (Seal.) Laura E. Hill. (Seal.) J. W. Hill. (Seal.)

Executed in the presence of John W. Reynolds, A. F. Flegel.

STATE OF OREGON,
County of Multnomah, ss:

This Certifies that on this 29th day of July, 1908, before me, the undersigned, a Notary Public in and for said county and state, personally appeared the within named Joseph A. Hill, Laura E. Hill and J. W. Hill, who are known to me to be the identical persons described in, and who executed the within instrument, and acknowledged to me that they executed the same freely and voluntarily for the uses therein mentioned.

In testimony whereof, I have hereunto set my hand and official seal the day and year last above written.

John W. Reynolds, Notary Public for Oregon. (Seal.)

[fol. 14] File No. 12824

State of Oregon

Office of the Secretary of State

Certificate of Filing and Recording Articles of Incorporation

To all to whom these presents may come, Greeting:

Know ye, That Whereas, Joseph A. Hill, Laura E. Hill and J. W. Hill having presented Articles of Incorporation of a Corporation organized and formed for profit under and pursuant to the Laws of the State of Oregon, and paid the organization and annual license fees provided by "An Act to provide for the licensing of Domestic Corporations and Foreign Corporations, Joint Stock Companies and Associations, etc." approved February 16, 1903;

Now, therefore, I, F. W. Benson, Secretary of State of the State of Oregon, do hereby certify, that said Articles of Incorporation have been filed and recorded in the office of the Secretary of State; that the name assumed by said corporation is Hill Military Academy, the duration perpetual; the enterprise, business, pursuit or occupation:

To conduct a military academy and school; and the corporation shall have power and authority to purchase, own, acquire, lease, occupy, and take possession of, sell, mortgage, hypothecate and pledge real and personal property, necessary, desirable or needed in the conduct of such school and academy;

And shall also have power and authority to employ teachers and all labor and assistance necessary in the conduct of such academy, fixing a course of study, appointing principals, superintendents, and other persons to have charge of such school or academy;

[fols. 15 & 16] And shall have power and authority to issue to the students who have completed the course of study prescribed by such school or academy, diplomas and certificates;

And to do each and everything necessary or required to be done in the successful conduct of such school or academy.

The amount of capital stock, One Thousand ($1,000) Dollars; the date of filing its Articles of Incorporation, the 31st day of July, A. D., 1908; the location of its principal office, in the City of Portland, in the County of Multnomah, State of Oregon; the amount of the organization fee paid, Ten ($10.00) Dollars, and the amount of annual license fees paid, Nine and 20/100 ($9.20) Dollars, for the current fiscal year ending June 30, 1909.

In testimony whereof, I have hereunto set my hand and affixed hereto the seal of the State of Oregon.

Done at the Capitol at Salem, Oregon, this 31st day of July, 1908.

F. W. Benson, Secretary of State. (Seal of the State of Oregon.)

Jurat showing the foregoing was duly sworn to by Joseph A. Hill omitted in printing.

[fol. 17] IN UNITED STATES DISTRICT COURT

No. E. 8660

[Title omitted]

ORDER SETTING CAUSE—Filed Dec. 27, 1923

Now at this time came the plaintiff, appearing by its attorney John C. Veatch, and having moved the Court for the issuance of a preliminary injunction in accordance with the prayer set forth in its bill of complaint herein and having requested that the time be set for the hearing of the same. Now therefore

It is ordered that the hearing of such application be set for the 15 day of January, 1924, at 10 o'clock, A. M., in the court room of the above entitled court at the United States Court Building at the City of Portland, Multnomah County, Oregon, and that not less than five days notice thereof be given to said defendants and each of them of the time and place of said hearing, and I hereby call to my assistance at the hearing of said motion the Honorable Robt. S.

Bean, District Judge of this District, and the Honorable Wm. B. Gilbert, Circuit Judge of this Circuit.

Done and dated in open Court this 27 day of December, 1923.

Chas. E. Wolverton, Judge of the District Court of the United States for the District of Oregon.

[File endorsement omitted.]

[fol. 18] [File endorsement omitted.]

[fol. 19 & 20] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO DISMISS—Filed Jan. 3, 1924

Come now the defendants above named and move the Court to dismiss the amended bill on the ground that there is no equity therein, and that it fails to state any facts sufficient to entitle plaintiff to a decree herein.

I. H. Van Winkle, Attorney General; Stanley Myers, District Attorney for Multnomah County, Oregon; McCamant and Thompson, Attorneys for Defendants.

I certify that the foregoing motion is in my opinion well founded in law.

Wallace McCamant, of Attorneys for Defendants.

Due service of the within Motion is admitted this 3rd day of January, 1924.

John C. Veatch, of Attorneys for Hill Military Academy, plaintiff. —— ——, of Attorneys for Plaintiff.

[File endorsement omitted.]

[fol. 21] No. E. 8660

[Title omitted]

JUDGMENT—Filed March 31, 1924

To Walter M. Pierce, as Governor of the State of Oregon; Isaac H. Van Winkle, as Attorney General of the State of Oregon, and Stanley Meyers, as District Attorney for Multnomah County, Oregon:

The plaintiff in the above entitled case having filed its bill of complaint, duly verified by Joseph A. Hill, Secretary of plaintiff cor-

poration, in the District Court of the United States for the District of Oregon, praying that an Act passed by a vote of the people of the State of Oregon, at a general election held in said State on the 7th day of November, 1922, entitled "An Act To amend Section 5259, Oregon Laws," be declared unconstitutional and void as in violation of the Constitution of the United States, and for an injunction against said defendants requiring them to refrain from certain acts hereinafter more particularly mentioned, and having applied to the Court for an interlocutory injunction and defendants having filed a motion to dismiss said bill of complaint and said motion and application having been heard by the Honorable William B. Gilbert, Judge of the United States Circuit Court of Appeals for the Ninth Circuit, and the Honorable Charles E. Wolverton and Robert S. Bean, Judges of the District Court of the United States for the District of Oregon, and it satisfactorily appearing to the Court that it [fol. 22] is a proper case for an injunction and that sufficient grounds exist therefor and that said Act is unconstitutional and void, therefore

It is ordered that said motion to dismiss be and the same is hereby overruled and that, until further order in the premises, you the said Walter M. Pierce, as Governor of the State of Oregon, and you, the said Isaac H. Van Winkle, as Attorney General of the State of Oregon, and you Stanley Meyers, as District Attorney for Multnomah County, Oregon, and each and every one of you, do absolutely desist and refrain from publishing and declaring that a certain Act passed by a vote of the people of the State of Oregon, at a general election held in said State on the 7th day of November, 1922, entitled "An Act To amend Section 5259, Oregon Laws," is a valid law of the State of Oregon, and from threatening to enforce said Act from and after the 1st day of September, 1926, and from attempting to enforce said Act from and after said date.

Dated this 31st day of March, 1924.

Chas. E. Wolverton, Judge.

[File endorsement omitted.]

[fol. 23] [File endorsement omitted.]

[fol. 24] IN UNITED STATES DISTRICT COURT

E. 8662

THE SOCIETY OF THE SISTERS OF THE HOLY NAMES OF JESUS AND MARY, an Educational Corporation, Plaintiff,

v.

WALTER M. PIERCE, as Governor of the State of Oregon; ISAAC H. Van Winkle, as Attorney General of the State of Oregon, and Stanley Myers, as District Attorney for Multnomah County, State of Oregon, Defendants

E. 8660

HILL MILITARY ACADEMY, a Corporation, Plaintiff,

v.

WALTER M. PIERCE, as Governor of the State of Oregon; ISAAC H. Van Winkle, as Attorney General of the State of Oregon, and Stanley Myers, as District Attorney for Multnomah County, State of Oregon, Defendants

Bowerman & Kavanaugh, Malarkey, Seabrook & Dibble, Emmons & Lusk, Frank J. Lonergan, for Plaintiff The Society of the Sisters of the Holy Names of Jesus and Mary.

John C. Veatch, for Plaintiff Hill Military Academy.

I. H. Van Winkle, Attorney General, Stanley Myers, District Attorney for Multnomah County, McCamant and Thompson, for Defendants.

Before Gilbert, Circuit Judge, and Wolverton and Bean, District Judges

OPINION—Filed March 31, 1924

[fol. 25] The plaintiff in the first of the above cases, hereafter for convenience to be called the Sisters Society, was incorporated, and now maintains its corporate powers, under the general laws of Oregon providing for the incorporation of religious, literary and charitable societies; and the plaintiff in the second case, to be called the Academy, was incorporated under the general laws providing for the incorporation of private corporations, and is maintaining its school under and by virtue of such organization. Among the powers assumed by the Sisters Society is "The care of orphans and the education and instruction of youth, and to establish and maintain academies or schools for the care and education of youth in the cities and towns of the State of Oregon." And, among those assumed by the Academy, "To conduct a military academy and school."

Each of these institutions teaches the primary or grammar grades, including children ranging from eight to sixteen years of age. Each has been in existence for many years, and has built up and acquired an extensive patronage and attendance, and owns real and personal property of great value, including equipment and laboratories for enabling it to maintain its school work; and each carries primary students through the eight grades of instruction required to be taught in the common schools, and under the supervision of the school authorities of the state. While this is true, each of these institutions engages in other lines of school work, one extending to religious and the other to military and other instruction; and their principal sources of sustenance are from tuition paid by student bodies.

There was enacted, under the initiative, on November 7, 1922, a [fol. 26] bill for the amendment of section 5259, Oregon Laws, which reads as follows:

"Children Between the Ages of Eight and Sixteen years.—Any parent, guardian or other person in the State of Oregon, having control or charge or custody of a child under the age of sixteen years and of the age of eight years or over at the commencement of a term of public school of the district in which said child resides, who shall fail or neglect or refuse to send such child to a public school for the period of time a public school shall be held during the current year in said district, shall be guilty of a misdemeanor and each day's failure to send such child to a public school shall constitute a separate offense; provided, that in the following cases, children shall not be required to attend public schools:"

Among the cases are children who have completed the eighth grade;

It is alleged, in effect, in each of these cases that the defendants do now publicly declare and publish that the act is valid, wise and wholesome; that they threaten and declare that they will enforce all the provisions thereof from and after the date it becomes operative, and that all parents and guardians having children between the ages of eight and sixteen years to nurture, support and educate, who shall send them to plaintiffs' grade schools after that date, will be prosecuted as violators of the act; that, by reason thereof, patrons are withdrawing their children from plaintiffs' schools, and depleting their attendance; that, if the process continues, as it assuredly will, complainants will be deprived of their entire patronage in the grade courses, the school systems in which they have been engaged will, in large measure, be destroyed, and they will be compelled to discontinue and close all their schools long before the act goes into effect; that the value of their property is being depreciated, [fol. 27] and it will be rendered practically worthless for school or other purposes.

These suits are instituted to have the act declared void, as in contravention of the constitutional rights and privileges of plaintiffs, and to restrain defendants from insisting upon its validity, now or at any time.

Plaintiffs claim that the act is void as violative of Section 1 of the Fourteenth Amendment of the Constitution, in that it trenches upon their privileges and immunities as citizens of the United States; that it deprives them of life, liberty and property without due process of law, and the equal protection of the laws, and is violative also of that clause of Section 10, Article I of the Constitution, relating to the impairment of the obligation of contracts.

Complainants are asking for injunctive relief. Defendants have interposed motions to dismiss.

WOLVERTON, District Judge:

Without refining as to the precise political rights that corporations, whether civil, religious or educational, have and possess, and of right may assert and maintain, in this country, it is sufficient to say that it has been recognized by ample authority that, while not possessing the rights of citizens under the privileges and immunity clause of the Fourteenth Amendment to the Constitution (Waters-Pierce Oil Company v. Texas, 177 U. S., 28, 45), they do have the guarantee, along with citizens, that they shall not be deprived of their property without due process of law, nor be denied the equal protection of the laws. Smyth v. Ames, 169 U. S. 466, 526; Covington &c. Turnpike Co. v. Sandford, 164 U. S. 578, 592; Gulf, Colorado & Santa Fe Railway Company v. Ellis, 165 U. S. 150, 154; Southern Railway Co. v. Green, 216 U. S. 400, 416.

[fol. 28] The question as to equitable jurisdiction is a simple one, and it may be affirmed that, without controversy, the jurisdiction of equity to give relief against the violation or infringement of a constitutional right, privilege or immunity, threatened or active, to the detriment or injury of a complainant, is inherent, unless such party has a plain, speedy and adequate remedy at law. And in the exercise of such jurisdiction, the court may, in proper cases, restrain state officers, clothed with authority for enforcing the laws, from the threatened enforcement of a state law which contravenes the federal Constitution, wherever it is essential in order effectually to protect property rights and the rights of persons against injuries otherwise irremediable. Terrace et al. v. Thompson, Advance Sheets Supreme Court, No. 29, pp. 3, 4, and cases there cited.

Further than this, a party insisting that constitutional guaranties for his benefit are being violated, may also insist, as an element of infringement of such guaranties, that others upon whom he is dependent for the support and sustenance of his lawful business shall not be deprived of their constitutional rights, privileges and immunities. Thus, in Truax v. Raich, 239 U. S. 33, it appears that, under an act passed by the Legislative Assembly of Arizona, employers were prohibited, under penalty, from employing aliens to the extent of more than twenty per cent of their working force. Mike Raich, an alien employee, feeling himself aggrieved, instituted a suit against his employer and the district attorney of the proper county, to restrain the enforcement of the act. It was urged, among other things, that the servant ought not to be heard to complain for his

master, who alone was subject to prosecution. But the court answered:

[fol. 29] "The act undertakes to operate directly upon the employment of aliens and if enforced would compel the employer to discharge a sufficient number of his employees to bring the alien quota within the prescribed limit. It sufficiently appears that the discharge of the complainant will be solely for the purpose of meeting of the requirements of the act and avoiding threatened prosecution under its provisions. It is, therefore, idle to call the injury indirect or remote."

The pertinency of the court's conclusion is the more manifest in view of its previous declaration, as a premise, that the "employee has manifest interest in the freedom of the employer to exercise his judgment without illegal interference or compulsion and, by the weight of authority, the unjustified interference of third persons is actionable although the employment is at will."

Likewise, in Terrace et al. v. Thompson, Attorney General of the State of Washington, supra, which was a suit to enjoin the enforcement of the anti-alien land law of that state, it appears that the Terraces and one Nakatsuka, a Japanese and an alien, were desirous of entering into a lease of realty belonging to the former. Against the contention of the Attorney General that the parties had an adequate remedy at law, the court replied, among other things:

"The owners have an interest in the freedom of the alien, and he has an interest in their freedom, to make the lease. The state act purports to operate directly upon the consummation of the proposed transaction between them, and the threat and purpose of the Attorney General to enforce the punishments and forfeiture prescribed prevents each from dealing with the other."

The same principal is directly involved, though not discussed, in the case of Nebraska District of Evangelical Lutheran Synod v. McKelvie et al., Advance Sheets Supreme Court, No. 440, read in connection with Meyer v. Nebraska, Advance Sheet No. 325.

To make the application here, the complainants in the instant cases have an interest in the parents and guardians of children of school age, and in the protection of their constitutional rights and liberties, and such parents and guardians have an interest in the [fol. 30] constitutional rights of complainants to see that their schools may be maintained for the mutual use and benefit of the parties concerned. Thus the field of inquiry is broadened, and pertains, not only to whether the complainants' constitutional rights are affected adversely by the act in controversy, but to whether the constitutional rights of the parents and guardians are also adversely affected, for if they are so affected, complainants will be deprived nevertheless, of the advantage of patrons with legal right and privilege of providing school attendance. In other words, the schools will be affected adversely, if the act is unconstitutional, whether it be by reason of an invasion of the patrons' constitutional rights and

privileges, or of an invasion of plaintiffs' inherent rights, or both. Indeed, the very pith of complainants' contention is that they cannot maintain their schools if their patronage is taken away by making it unlawful for parents and guardians to send their children to complainants' schools.

It can scarcely be contended that complainants' right to carry on their schools, whether parochial or private, is not a property right, and the right of parents and guardians to send their children and wards to such schools as they may desire, if not in conflict with lawful requirements, is a privilege they inherently are entitled to enjoy. Meyer v. Nebraska, supra, and Nebraska District of Evangelical Lutheran Synod v. McKelvie et al., supra, seem to affirm the propositions. See also, C. M. & St. Paul R. R. Co. v. Wisconsin, 238 U. S. 491; Adkins et al. v. Children's Hospital and Adkins et al. v. Lyons, Nos. 795, 796, Advance Sheets, Supreme Court.

One of the searching questions involved by the controversy is [fol. 31] whether the causes have been prematurely brought. It will be noted that the act complained against is to become effective on and after the first day of September, 1926; more than two years and five months hence. This presents one of the elements which must be considered, along with the rest, for ascertaining and determining whether, under the showing made, the complainants, or either of them, are meeting with irreparable and irremediable injury which may not be as speedily and adequately met by such remedies as the law side of the court may afford. The principal that the remedy at law, if relied upon to supplant the equitable jurisdiction, must not only be plain, speedy and adequate, but as adequate, complete, practical and efficient to meet the ends of justice as that in equity, is so well settled as to need no citation of authorities. See, however, Terrace v. Thompson, supra.

It is at once obvious that, in the very nature of the upbuilding and maintenance of parochial and private schools, when the attendance, prospective as well as acquired, is taken away or rendered unlawful, it will destroy the pursuit or occupation. If school buildings have been constructed and equipment purchased and provided, without school attendance such property must lapse into disuse, and become of no value for the purposes for which it was designed, and, of course, an irreparable loss will ensue; the paramount loss of school attendance, and a damage and practical destruction, especially for school purposes, of the school property.

Now, although the time at which the act is to become effective is somewhat remote, it is quite apparent, from the allegations of the bills, the work of destruction of complainants' occupation has already [fol. 32] set in. They are losing their patronage, traceable directly to the fact that the act is a statute duly adopted and promulgated. Parents are looking to the future, and are laying their plans to meet the exigencies to arise. The curriculum of the grade schools requires several years of attendance, and, if parents must, on the taking affect of the statute, send to the public schools, many of them are prepared to do so now, or as convenience may suggest. Hence the drawing away of complainants' patronage has set in, and will

continue with increased progression until the day when all will be lost. This is not only the alleged result of the passage of the act, but it is the most natural and consequential thing to expect. The damage, of course, is irreparable, and compensation does not afford adequate relief. The injury being of a quality that is continuous and accelerating, it must be stayed if the ends of justice are to be met.

Nor is it an answer to the dilemma that the act may be repealed before it becomes operative, or that ample opportunity is afforded for the people or the legislature to amend it so as to present a radically different question from that now involved. In all probability its provisions will remain as they now are until they become operative and the damage is done, for it is not usual to amend or repeal statutes, at least until their effect has been tested. The very purpose of placing the effective date so far ahead was to give ample time for the parochial and private schools to adjust themselves to the new conditions, which is really a confession on the part of the lawgivers that such schools are going to be hurt, and that seriously, if not irreparably.

It must be true, as expressed by Mr. Justice Brewer while sitting in the Circuit Court of Nebraska, "that the powers of a court of [fol. 33] equity are as vast, and its processes and procedure as elastic, as all the changing emergencies of increasingly complex business relations and the protection of rights can demand." Quoted in Toledo, A. A. & N. M. Ry. Co. v. Pennsylvania Co., 54 Fed. 746, 751.

That the writ may be novel, or is without precedent, is not a fatal objection to its use, for the jurisdiction of a court of equity depends "rather upon the necessities of mankind, and the great principles of natural justice, which are recognized by the courts as a part of the law of the land, and which are applicable alike to all conditions of society, all ages, and all people." Dodge v. Cole, 97 Ill. 338, 368.

"Courts may amplify remedies and apply rules and general principles for the advancement of substantial justice." 32 Corpus Juris. p. 34, Sec. 13.

Of course, in the use of the writ of injunction, the court must exercise a sound and legal discretion, regulated by analogy, and by what would be manifestly just, in view of all the existing conditions.

It cannot be questioned that a party affected by an unconstitutional act need not wait until some step is taken, under the act, that would affect him injuriously. "One does not have to await the consummation of threatened injury to obtain preventive relief." Pennsylvania v. West Virginia, Advance Sheets Supreme Court, No. 15. See, also, Vicksburg Waterworks Co. v. Vicksburg, 185 U. S. 65, where the court says:

"But it is one of the most valuable features of equity jurisdiction, to anticipate and prevent a threatened injury, where the damages would be insufficient or irreparable. The exercise of such jurisdic- [fol. 34] tion is for the benefit of both parties; in disclosing to the defendant that he is proceeding without warrant of law, and in protecting the complainant from injuries which, if inflicted, would be wholly destructive of his rights."

See, further, Detroit Creamery Co. v. Kinnane, 264 Fed. 845; affirmed 255 U. S. 102.

The case of Terrace v. Thompson, supra, is one where, though the act was effective, there was no violation thereof by the parties concerned. Yet a suit to enjoin its enforcement was sustained, on the ground that a violation of the act would subject the offenders to the penalty subjoined.

Nor are we without precedent for the application of injunctive relief even prior to the time when the statute becomes effective. Palatka Waterworks v. City of Palatka, 127 Fed. 161; and Davenport v. Kleinschmidt, 6 Mont. 502, seems to be of like character.

However, considering that injunctive relief is appropriate to prevent threatened or impending irreparable injury and damage to one's property rights, it can hardly be further urged that it is inapplicable here because the suits were prematurely instituted. The present bills of complaint show, not only a threat to enforce the act when it becomes effective, but that complainants are suffering irremediable injury now, which will continue with increasing detriment and damage until their principal occupations are destroyed and they are deprived of their property and property rights. We think the suits were not prematurely brought.

It is not denied that the state, in its sovereign capacity, is entitled to the exercise of what are termed police powers. What these powers are, the courts have not attempted to define precisely. But, without [fol. 35] question, they relate to the safety, health, morals and general welfare of the public.

"Both property and liberty," says the court in Lochner v. New York, 198 U. S. 45, 53, "are held on such reasonable conditions as may be imposed by the governing power of the state in the exercise of those powers, and with such conditions the Fourteenth Amendment was not designed to interfere."

But there is a limit to the manner in which these powers may be exercised by the state. They cannot be exercised arbitrarily and despotically, nor unless there exists a reasonable relation between the character of the legislation and the policy to be subserved. Nor is the state legislature the final judge of the limitations of the police power. Its enactments will be set aside when found to be unwarranted and arbitrary interference with rights protected by the Constitution in carrying on a lawful business or occupation in the use and enjoyment of property. In other words, the exercise of the police power is subject to judicial review, and property rights cannot be ruthlessly destroyed by wrongful enactment. Silz v. Hesterberg, 211 U. S. 31, 39; Lawton v. Steele, 152 U. S. 133, 137; Dobbins v. Los Angeles, 195 U. S. 223, 239.

In elaboration of the principle, the courts may not, however, because of the mere fact that they differ from the legislature in its views of public policy, or hold views inconsistent with the propriety of the legislation in question, interfere judicially; nor unless the act in question is unmistakably and palpably in excess of legislative power. McLean v. Arkansas, 211 U. S. 539, 547.

[fol. 36] There are certain known callings and occupations that the state may, under and in pursuance of its police powers, regulate

by reasonable interposition, but it cannot prohibit their exercise, where to do so will infringe the guaranties of the Fourteenth Amendment. Thus, employment agencies may be regulated, but not prohibited. Adams v. Tanner, 244 U. S. 590.

The right of the individual to work and earn a livelihood may not be prohibited, though the workman be an alien. Truax v. Raich, supra.

The right to contract in relation to one's business is a liberty that may not be inhibited without entrenchment upon rights guaranteed by the Fourteenth Amendment. Lochner v. New York, supra; Adkins et al. v. Childern's Hospital, supra.

The right to engage in a useful, legitimate business, not harmful or vicious, is protected under the amendment, and cannot be abrogated. Murphy v. California, 225 U. S. 623.

And the right to teach German along with the grammar school grades may not be impinged upon under the guise of legislative regulation. Meyer v. Nebraska, supra.

No one questions the proposition that our public schools are subject to a reasonable supervision of the state, through its legislature, in the exercise of its police powers, for safeguarding the health, morals and general weal of the public. Nor is it disputed that, while parents possess a natural and inherent right to the nurture, control and tutorship of their offspring, that they may be brought up according to the parents' conception of what is right and just, decent and respectable, and manly and noble in life, the state yet stands in the position of parens patriæ to, and may exercise its just powers "in preparing the child, in future life, to support itself, to [fol. 37] serve the state and in all the relations and duties of adult life to perform well and capably its part." People v. Ewer, 141 N. Y. 129, 133; State v. Shorey, 48 Or. 396, 399.

The test here is not as to these primordial and long established principles, and they are referred to only for clarifying the atmosphere, so that we may proceed intelligently to a discussion of the very crux of the cases at bar. The real test is, Has the state, through its legislative functions, the power, under the guise of police regulation, to deprive parochial and private school organizations of the liberty and right to carry on their schools for teaching in the grammar grades?

The act could not be more effective for utterly destroying the business and occupation of complainants' schools, except perhaps the college and higher preparatory grades, if it had been entitled "An Act to prevent parochial and private schools from teaching the grammar grades." This serves to emphasize the seriousness of the controversy. Indeed, the simile is no stronger than the argument for the adoption of the measure put it: "A divided school can no more succeed than a divided nation." That such is the purpose of the act is obvious and incontrovertible.

It cannot be successfully combated that parochial and private schools have existed almost from time immemorial—so long at least that their privilege and right to teach the grammar grades must be regarded as natural and inherent, as much so as the privilege and

right of a tutor to teach the German language with the grammer grades, as was held in Meyer v. Nebraska, supra. The absolute right of these schools to teach in the grammar grades (paraphrasing somewhat the language of the court in the case just cited), and the right of the parents to engage them to instruct their children, we think, is within the liberty of the Fourteenth Amendment. [fol. 38] The right of the state to establish as its school policy compulsory education within its boundaries is conceded. Practically all the states in the Union have adopted such a policy, and no one disputes its utility for reducing illiteracy and raising the standard of citizenship. But no state has ventured so far as to eliminate parochial and private schools from participating in the promotion of the policy.

Compulsory education being the paramount policy of the state, can it be said, with reason and justice, that the right and privilege of parochial and private schools to teach in the common school grades is inimical or detrimental to, or destructive of, that policy? Such schools and their patrons have the same interest in fostering primary education as the state, and appropriate regulation will place them under supervision of school authorities. So they will not escape the duty of proper primary instruction. No one has advanced the argument that teaching by these schools is harmful, or that their existence with the privilege of teaching in the grammar grades is a menace, or of vicious potency, to the state or the community at large, and there appears no plausible or sound reason why they should be eliminated from taking part in the primary education of the youth. It would seem that the act in question is neither necessary nor essential for the proper enforcement of the state's school policy.

The court in the Meyer case, in stating some things that are without doubt included by the term "liberty" as guaranteed by the Constitution, concludes, "and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men." And further on the court says (allusion [fol. 39] to which has been previously made):

"Plaintiff in error taught this (German) language in school as part of his occupation. His right thus to teach and the right of parents to engage him so to instruct their children, we think, are within the liberty of the Amendment."

These declarations, although they speak of the individual, are applicable here, notwithstanding complainants are bodies corporate. Their right and privilege to teach the grammar school grades, and the privilege of parents to employ them, are the same as though the individual were conducting a private school along the same lines. The mere fact that they bear corporate names affords no basis for distinguishing them from private schools, conducted by an individual or individuals, with a corps of teachers and instructors to carry on the school work.

"The established doctrine is," continues the court, "that this liberty may not be interfered with, under the guise of protecting

the public interest, by legislative action which is arbitrary or without reasonable relation to some purpose within the competency of the state to effect."

The melting pot idea applied to the common schools of the state, as an incentive for the adoption of the act, is an extravagance in simile. A careful analysis of the attendance of children of school age, foreign born and of foreign born parentage, at private schools, as compared with the whole attendance at schools, public and private, would undoubtedly show that the number is negligible, and the assimilation problem could afford no reasonable basis for the adoption of the measure. But if it be that the incentive is political, and arises out of war exigencies and conditions following thereupon, then the assimilation idea is pointedly answered by the opinion rendered in the Meyer case.

[fol. 40] "The desire of the Legislature to foster a homogeneous people with American ideals prepared readily to understand current discussions of civic matters is easy to appreciate. Unfortunate experiences during the late war and aversion toward every characteristic of truculent adversaries were certainly enough to quicken that aspiration. But the means adopted, we think, exceed the limitations upon the power of the state and conflict with rights assured to plaintiff in error."

So it is here, in our opinion, the state, acting in its legislative capacity, has, in the means adopted, exceeded the limitations of its power—its purpose being to take utterly away from complainants their constitutional right and privilege to teach in the grammar grades—and has and will deprive them of their property without due process of law.

Other questions have been presented, but, their decision not being necessary to a determination of the controversy involved, they are not considered.

The motion to dismiss will be denied, and a preliminary injunction will issue, restraining the defendants from threatening or attempting to enforce the act complained against.

[File endorsement omitted.]

[fol. 41] [File endorsement omitted.]

[fol. 42] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR AND ORDER ALLOWING APPEAL—Filed June 19, 1924

The above named defendants conceiving themselves aggrieved by the order and decree of injunction made and entered on the 31st day of March, 1924, in the above entitled cause, do hereby appeal

from said order and decree to the Supreme Court of the United States for the reasons specified in the assignment of errors which is filed herewith, and pray that this appeal may be allowed and that a transcript of the record, proceedings, and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

I. H. Van Winkle, Attorney General; Willis D. Moore, Assistant Attorney General; Stanley Myers, District Attorney for Multnomah County, Solicitors for Defendants.

The foregoing claim of appeal is allowed in open court this 19th day of June, 1924, upon defendants filing appeal bond in the sum of $500.

R. S. Bean, District Judge.

STATE OF OREGON,
County of Multnomah, ss:

Due service of the copy of the within Petition for Appeal admitted at Portland, Oregon, this 19th day of June, 1924.

John C. Veatch, of Attorneys for Plaintiff

[File endorsement omitted.]

[fol. 43] [File endorsement omitted.]

[fol. 44] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS—Filed June 19, 1924

The defendants pray an appeal from the order and decree of injunction passed on the 31st day of March, 1924, in favor of plaintiff and against the defendants and assign for error:

I

That the court erred in enjoining the enforcement of the statute enacted by the electors of Oregon under the initiative on the 7th day of November, 1922, and set forth at large in the seventh paragraph of the amended bill of complaint, which statute is also set forth as chapter one of the General Laws of Oregon for the year 1923 in the compilation of the said General Laws of Oregon officially published by the State of Oregon.

II

The court erred in holding the statute set forth at large in the seventh paragraph of plaintiff's amended bill of complaint, which statute is also described as chapter one of the General Laws of Oregon for the year 1923 as violative of the constitutional rights of plaintiff.

III

The court erred in holding that the statute set forth at large in the seventh paragraph of the amended bill of complaint of plaintiff and [fol. 45] published as chapter one of the General Laws of Oregon for the year 1923 is unconstitutional and void.

IV

The court erred in holding that plaintiff is in a position to raise the legal questions relied upon by it and determined in its favor by the above entitled court on the 31st of March, 1924.

V

The court erred in failing to sustain the motion of defendants to dismiss plaintiff's amended bill of complaint.

VI

The court erred in failing to hold that plaintiff's suit is prematurely brought and that the injunction prayed for by plaintiff should for this reason be denied.

VII

The court erred in passing an injunction order as against the defendant, Walter M. Pierce, as Governor of Oregon.

VIII

The court erred in passing an injunction order as against the defendant, Isaac H. Van Winkle, as Attorney General of Oregon.

IX

The court erred in passing an injunction order as against the defendant, Stanley Myers, as District Attorney for Multnomah County, Oregon.

X

The court erred in restraining the expression and publication of the opinions of the defendants as to the constitutionality of the statute adopted under the initiative by the people of Oregon on the 7th of November, 1922, and published as Chapter one of the General Laws of Oregon for 1923.

XI

The court erred in passing an injunctive order which fails to specify [fol. 46] the acts on the part of defendants which are enjoined except only the expression and publication of the opinions of defendants set forth in the ninth assignment of error.

XII

The court erred in passing an injunctive order vague and uncertain as to the acts undertaken to be restrained and enjoined.

XIII

The court erred in holding that the statute so adopted under the initiative on the 7th day of November, 1922, and set forth at large in the seventh paragraph of the amended bill of complaint which statute is also published as chapter one of the General Laws of Oregon for the year 1923 in the official compilation of the said laws, is in conflict with the Constitution of the United States and particularly with the fourteenth amendment thereto.

I. H. Van Winkle, Attorney General for Oregon; Willis D. Moore, Assistant Attorney General; Stanley Myers, District Attorney for Multnomah County, Oregon, Solicitors for Defendants.

For proof of service see original citation.

[File endorsement omitted.]

[fol. 47] [File endorsement omitted.]

[fol. 48] PRAYER FOR REVERSAL—Omitted; printed side page a ante.

[fol. 49] [File endorsement omitted.]

[fol. 50] [Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed June 19, 1924

To G. H. Marsh, Clerk of the above-entitled Court:

In preparing the record on appeal in the above entitled cause, you will incorporate therein the following papers:

1. Amended bill of complaint filed December 17, 1923.

2. Motion to dismiss filed January 3, 1924.

3. Order reciting oral motion for injunction and hearing thereon and on motion to dismiss January 15, 1924.

4. Order and decree of injunction passed March 31, 1924.

5. Opinion of court in passing injunctive order March 31, 1924.

6. Petition for appeal and allowance thereof.

7. Bond on appeal and approval thereof.

8. Citation on appeal and record of proof of service thereof.

Assignment of Errors.

I. H. Van Winkle, Attorney General of Oregon; Willis D. Moore, Assistant Attorney General; Stanley Myers, District Attorney for Multnomah County, Oregon, Solicitors for Defendants.

For proof of service see original citation.

[File endorsement omitted.]

[File endorsement omitted.]

ND ON APPEAL FOR $500—Approved and filed June 1924; omitted in printing

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—Omitted; printed on page a ante

S:

OURT

I, G. H. Marsh, Clerk of the ... United States for the District of Oregon, do hereby ... foregoing pages numbered from 3 to 55, inclusive, constit... script of record on appeal from the order and judgment of ... t in the case in which Hill Military Academy, a corporation, ... aintiff and appellee, and Walter M. Pierce, as Governor of the ... tate of Oregon, Isaac H. Van Winkle, as Attorney General of the state of Oregon, and Stanley Myers, as District Attorney for Multnomah county, state of Oregon, are defendants and appellants; that the said transcript of record has been prepared by me in accordance with the præcipe filed by said appellants, and is a full, true, and complete transcript of the record of proceedings had in said court in said cause, which the said præcipe directed to be included therein, as the same appear of record and on file at my office and in my custody.

I further certify that the cost of the foregoing transcript is $15.35, and that the same has been paid by the said appellants.

TORN PAGE

In testimony whereof I have hereunto set my hand and affixed the seal of the said Court at Portland, in said District, this 8th day August, 1924.

G. H. Marsh, Clerk. (Seal United States Distri[illegible] Oregon.)

[fol. 57] [Endorsed:] In the United States Supreme Court. ter M. Pierce, as Governor of the State of Oregon, Isaac H. Van Winkle, as Attorney General of the State of Oregon, and Stanley Myers, as District Attorney for Multnomah County, State of Oregon, Appellants, vs. Hill Military Academy, a corporation, Appellee. Transcript of Record on Appeal from the District Court of the United States for the District of Oregon.

Endorsed on cover: File No. 30,549. Oregon D. C. U. S. Term No. 584. Walter M. Pierce, as Governor of the State of Oregon, [illegible] H. Van Winkle, as Attorney General of the State of [illegible] Stanley Myers, as District Attorney for Multn[illegible] of Oregon, appellants, vs. Hill Military [illegible] 14th, 1924. File No. 30,549.

(30,343)

Supreme Court of the United States

OCTOBER TERM, 1924

No. 583

WALTER M. PIERCE, as Governor of the State of Oregon; ISAAC H. VAN WINKLE, as Attorney-General of the State of Oregon, and STANLEY MYERS, as District Attorney for Multnomah County, State of Oregon,

Appellants,

vs.

THE SOCIETY OF THE SISTERS OF THE HOLY NAMES OF JESUS AND MARY,

Appeal from the District Court of the United States for the District of Oregon

Brief of Appellant, Isaac H. Van Winkle

I. H. VAN WINKLE,
Attorney-General,
WILLIS S. MOORE,
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(30,548)

SUPREME COURT
OF THE
UNITED STATES

OCTOBER TERM, 1924

No. 583

WALTER M. PIERCE, as Governor of the State of Oregon; ISAAC H. VAN WINKLE, as Attorney-General of the State of Oregon, and STANLEY MYERS, as District Attorney for Multnomah County, State of Oregon,

Appellants,

vs.

THE SOCIETY OF THE SISTERS OF THE HOLY NAMES OF JESUS AND MARY.

Appeal from the District Court of the United States for the District of Oregon

Brief of Appellant, Isaac H. Van Winkle

STATEMENT

The respondent is a religious society incorporated under the laws of the state of Oregon, and, as such, conducts private schools at various places in said state, in connection with which it owns and maintains buildings and equipment.

It is alleged in paragraph nineteen of appellee's amended bill of complaint that approximately 9,000 children between the ages of eight and sixteen years are now attending private grade schools in the state of Oregon.

For many years the statutes of Oregon have required parents, guardians, and other persons having control of children between and including the ages of nine and fifteen years, to attend public schools, but have contained a proviso exempting children being taught in private or parochial schools such branches as are usually taught in the first eight years of the public schools, and also exempting children physically unable to attend school, and those who reside at a distance from a school.

On July 6, 1922, an initiative petition for the submission to the people of the state of Oregon of an amendment to section 5259, Oregon Laws, was duly filed, and the said measure was submitted to the people at the general election held November 7, 1922, and approved by a majority of the votes cast thereon at said election. The said act and the amendment thereof will be found set out in full at pages 65 to 68 of this brief.

On December 22, 1923, the appellee filed in the District Court of the United States for the District of Oregon its amended bill of complaint, in which it prayed:

> "* * * that said pretended law be declared unconstitutional and void, and that this honorable court grant unto plaintiff its interlocutory writ of injunction enjoining and restraining said defendants and each of them and all persons claiming to act under their authority or direction or control from enforcing said pretended law on or after September 1, 1926, and from now threatening or giving out that they or either of them will enforce said pretended law on or after September 1, 1926, and from publishing or declaring that said pretended law is valid, and that this honorable court will call to its aid in hearing this application for an interlocutory injunction a Justice of the Supreme Court of the United States or a circuit judge of the Circuit Court of Appeals of the United States for the Ninth Judicial Circuit, and that upon such hearing the interlocutory injunction herein

prayed for be granted and made effective pending the final hearing and decision of this cause, and that upon such final hearing the said injunction shall be made perpetual, and that plaintiff may have such other and further relief as to this honorable court may seem equitable in the premises."

The grounds of invalidity are alleged in paragraph five of said amended bill of complaint to be as follows:

"1. That said pretended law attempts to deprive plaintiff of its property without due process of law in violation of that clause of section 1 of article XIV of the amendments to the Constitution of the United States, which provides that no state shall deprive any person of property without due process of law.

"2. That said pretended law attempts to deprive parents of their right to direct and control the education of their own children, and to deprive children of their right to acquire useful knowledge in private schools, and to deprive teachers of their right of engaging in the useful and lawful and lucrative occupation of teaching children in the eight primary grades in private schools, and to deprive plaintiff of its right to maintain and conduct its said grade schools in the state of Oregon—all in violation of the clause of section 1 of article XIV of the amendments to the Constitution of the United States which provides that no state shall deprive any person of liberty or property without due process of law.

"3. That said pretended law attempts to impair the obligation of the contract between the State of Oregon and the plaintiff arising out of the aforesaid corporation laws of said state and the incorporation of the plaintiff thereunder, in violation of section 10 of article I of the Constitution of the United States, and of section 21 of article I of the Constitution of the State of Oregon.

"4. That said pretended law attempts to delegate arbitrary and unlimited power and authority to the county school superintendents of the state of Oregon to determine when any child between the ages of eight

and 16 years shall attend the public grade schools of said state, and when any such child shall be exempt from the provisions of said pretended law, in violation of those clauses of section 1 of article XIV of the amendments to the Constitution of the United States, which provide that no state shall deprive any person of liberty without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

"5. That said pretended law attempts to control the free exercise and enjoyment of religious opinions and to interfere with the rights of conscience in violation of section 3 of article I of the Constitution of the State of Oregon, and of that clause of section 1 of article XIV of the amendments to the Constitution of the United States, which provides that no state shall deprive any person of liberty without due process of law.

"6. That said pretended law attempts to abridge the right of parents in the state of Oregon to send their children to private schools in other states of the United States, in violation of that clause of section 1 of article XIV of the amendments to the Constitution of the United States, which provides that no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.

"7. That said pretended law is void for that it embraces subjects which are not expressed in its title in violation of section 20 of article IV of the Constitution of the State of Oregon."

The case came on for hearing in the district court, before three judges, upon the application for an interlocutory injunction and on the 21st day of March, 1924, an order for interlocutory injunction was filed in said case by which the defendants were restrained from enforcing or attempting to enforce said act, and it was provided that such interlocutory injunction shall remain in force until the final hearing and determination of the said suit.

The matter is brought to this court by an appeal from the said order for interlocutory injunction.

ASSIGNMENTS OF ERROR

The appellants assign for error:

I

That the court erred in enjoining the enforcement of the statute enacted by the electors of Oregon under the initiative on the 7th day of November, 1922, and set forth at large in the thirteenth paragraph of the amended bill of complaint, which statute is also set forth as chapter one of the General Laws of Oregon for the year 1923 in the compilation of the said General Laws of Oregon officially published by the State of Oregon.

II

The court erred in holding the statute set forth at large in the seventh paragraph of plaintiff's amended bill of complaint, which statute is also described as chapter one of the General Laws of Oregon for the year 1923 as violative of the constitutional rights of plaintiff.

III

The court erred in holding that the statute set forth at large in the thirteenth paragraph of the amended bill of complaint of plaintiff and published as chapter one of the General Laws of Oregon for the year 1923 is unconstitutional and void.

IV

The court erred in holding that plaintiff is in a position to raise the legal questions relied upon by it and determined in its favor by the above entitled court on the 31st of March, 1924.

V

The court erred in failing to hold that plaintiff's suit is prematurely brought and that the injunction prayed for by plaintiff should for this reason be denied.

VI

The court erred in passing an injunction order as against the defendant, Walter M. Pierce, as Governor of Oregon.

VII

The court erred in passing an injunction order as against the defendant, Isaac H. Van Winkle, as Attorney General of Oregon.

VIII

The court erred in passing an injunction order against the defendant, Stanley Myers, as District Attorney for Multnomah County, Oregon.

IX

The court erred in passing an injunctive order which fails to specify the acts on the part of defendants which are enjoined.

X

The court erred in passing an injunctive order vague and uncertain as to the acts undertaken to be restrained and enjoined.

XI

The court erred in holding that the statute so adopted under the initiative on the 7th day of November, 1922, and set forth at large in the seventh paragraph of the amended bill of complaint which statute is also published as chapter one of the General Laws of Oregon for the year 1923 in the official compilation of the said laws, is in conflict with the Constitution of the United States and particularly with the Fourteenth Amendment thereto.

POINTS AND AUTHORITIES

I

The fourteenth amendment does not remove or restrict the power of the states to enact laws necessary to promote the health, safety, peace, morals, education or general welfare of its people.

Munn v. People of Illinois, 94 U. S. 278, S. C. Rep. 113-154, 24 L. Ed. 77, 83;

Boston Beer Co. v. Massachusetts, 97 U. S. 25, 24 L. Ed. 989, 992;

Barbier v. Connolly, 113 U. S. 27, 31, 28 L. Ed. 923, 924, 5 Sup. Ct. Rep. 357;

Mugler v. Kansas, 123 U. S. 623, 666, 31 L. Ed. 205, 212, 8 Sup. Ct. Rep. 273;

Powell v. Pennsylvania, 127 U. S. 678, 8 S. C. R. 992, 32 L. Ed. 253, 255, 257;

Re Kemmler, 136 U. S. 436, 449, 34 L. Ed. 519, 524, 10 Sup. Ct. Rep. 930;

Crowley v. Christensen, 137 U. S. 86, 34 L. Ed. 620, 623;

Jones v. Brim, 165 U. S. 180, 182, 41 L. Ed. 677, 678, 17 Sup. Ct. Rep. 282;

Jacobson v. Massachusetts, 197 U. S. 11, 49 L. Ed. 643, 649, 651, 652;

Interstate Consol. Street R. Co. v. Massachusetts, 207 U. S. 79, 52 L. Ed. 111, 115;

McLean v. Arkansas, 211 U. S. 539, 53 L. Ed. 315, 319, 320;

Middleton v. Texas Power & L. Co., 249 U. S. 152, 63 L. Ed. 527, 531;

N. O. Gas Light Co. v. Louisiana Light, etc., Mfg Co., 115 U. S. 650, 29 L. Ed. 516, 520;

Slaughter House Cases, 16 Wall. 22, 21 L. Ed. 394, 404-410;

Stone v. Mississippi, 101 U. S. 814, 25 L. Ed. 1079, 1080;

Sanitary District of Chicago v. United States, Advance Opinion No. 161, October Term, 1924, January 5, 1925.

II

The provisions of a corporation charter and of any law pursuant to which a corporation may have entered into valid contracts, are subject to modification and annulment under the police power.

Boston Beer Co. v. Massachusetts, 97 U. S. 25, 24 L. Ed. 989, 992;
Stone v. Mississippi, 101 U. S. 814, 25 L. Ed. 1079, 1080;
The Mayor, etc., of the City of New York v. Miln, 11 Peters 102, 9 L. Ed. 648, 660;
Eagle Insurance Co. v. State of Ohio, 153 U. S. 449, 38 L. Ed. 778, 780;
Chicago B. & Q. Co. v. State of Nebraska ex rel. Omaha, 170 U. S. 59, 52 L. Ed. 948, 953;
Pacific Gas & E. Co. v. Police Court, 251 U. S. 22, 64 L. Ed. 112, 117;
Thornton v. Duffy, 254 U. S. 361, 65 L. Ed. 304, 309;
Chicago L. Ins. Co. v. Needles, 113 U. S. 574, 28 L. Ed. 1084, 1087.

III

As to minors, the state stands in the position of parens patriae and may exercise unlimited supervision and control over their contracts, occupation and conduct and the liberty and right of those who assume to deal with them.

State v. Shorey, 48 Or. 396, 398;
Stettler v. O'Hara, 69 Or. 519;
State v. Bunting, 71 Or. 259;
Gibbons v. Gibbons, 75 Or. 500, 503;
Merges v. Merges, 94 Or. 246, 252;
State v. Bailey, 157 Ind. 324, 59 L. R. A. 435, 537;
Sturges & Burn Mfg. Co. v. Beauchamp, 231 U. S. 320, 58 L. Ed. 245, 249;

Muller v. Oregon, 208 U. S. 412, 52 L. Ed. 551, 555;
Starnes v. Albion Mfg. Co., 147 N. C. 566, 61 S. E. 525, 17 L. R. A. (N. S.) 602, and notes, 15 Ann. Cas. 470, and notes;
People v. Ewer, 141 N. Y. 129, 36 N. E. 4, 25 L. R. A. 794;
Berea College v. Commonwealth, 123 Ky. 209, 94 S. W. 623, 13 Ann. Cas. 337;
State v. Jackson, 71 N. H. 552, 53 Atl. 1021, 60 L. R. A. 739;
Commonwealth v. Roberts, 159 Mass. 372, 34 N. E. 402;
State v. Counort, 69 Wash. 321, 124 Pac. 910, 41 L. R. A. (N. S.) 95;
Meyer v. Nebraska, 262 U. S. 390, 67 L. Ed. 1042, 1045, 1046;
Schouler on Domestic Relations, 5th Ed., Sec. 235, 20 R. C. L. 597;
In re Turner, 49 Kan. 115, 145 Pac. 871, Ann. Cas. 1916E, 1022, 1024;
Vanwalters v. Board of Children's Guardians, 132 Ind. 567, 32 N. E. 568, 18 L. R. A. 431, 432;
State v. Rose, 125 La. 462, 51 So. 496, 26 L. R. A. (N. S.) 821;
Ex parte Powell, 6 Okla. Cr. Pr. 495, 120 Pac. 1022, 1028;
Egoff v. Board of Children's Guardians, 170 Ind. 238, 84 N. E. 151, 155;
U. S. v. Behrendsohn, 197 Fed. 953;
Beauchamp v. Sturges Mfg. Co., 231 U. S. 320, 58 L. Ed. 245, 249, L. R. A. 1915A, 1196;
Interstate Company v. Massachusetts, 207 U. S. 79, 52 L. Ed. 111, 115, 12 Ann. Cas. 555, 557.

IV

The statute does not interfere with the religious liberty of any one.

Permoli v. New Orleans, 3 How. 589, 609, 11 L. Ed. 739, 748;
Brunswick Co. v. Evans, 228 Fed. 991;
People v. Board of Education, 245 Ill. 335, 19 Ann. Cas. 220, 29 L. R. A. (N. S.) 442, 92 N. E. 251;
Swafford v. Keaton, 23 Ga. App. 238, 98 S. E. 122;
State v. Mockus, 113 Atl. 39, 44 (Me.);
Reynolds v. U. S., 98 U. S. 145, 25 L. Ed. 244, 250;
Commonwealth v. Herr, 229 Pa. St. 132, 78 Atl. 68, 71-72;
Owens v. State, 6 Okla. Cr. 110, 36 L. R. A. (N. S.) 633, 634-636;
People v. Pierson, 176 N. Y. 201, 63 L. R. A. 187, 192, 68 N. E. 243;
Scales v. State, 47 Ark. 476, 58 Am. Rep. 768, 1 S. W. 769, 771;
Commonwealth v. Has, 122 Mass. 40, 42;
Philips v. Gratz, 2 Pen. & W. 412, 23 Am. Dec. 33;
Wilkes-Barre v. Garabed, 11 Pa. Super. 355;
Smith v. People, 51 Colo. 270, 36 L. R. A. (N. S.) 158, 161.

V

The American people as a whole have unalterably determined that there shall be an absolute and unequivocal separation of church and state, and that the public schools shall be maintained and conducted free from influences in favor of any religious organization, sect, creed or belief.

Article I, Constitution of United States;
Article I, section 5, Oregon Constitution;
Article VIII, section 3, Oregon Constitution;
Knowlton v. Baumhover, 182 Iowa 691, 166 N. W. 202, 5 A. L. R. 841, 848, 849, 850, 851, 856;

Wilkerson v. Rome, 152 Ga. 762, 110 S. E. 895, 20 A. L. R. 1334, and notes;
Evans v. Selma Union High School District (Cal., 1924), 222 Pac. 801, 31 A. L. R. 1121;
Donahoe v. Richards, 38 Me. 379, 61 Am. Dec. 256, 272, 273, 274, 275.

VI

The provisions of subdivision "d" of the act conferring upon county superintendents power to determine whether or not a child is being properly taught, and to order such as are not to be sent to public schools, do not invalidate the measure, but relate to a proper exercise of administrative power.

State v. Briggs, 45 Or. 366, 375-376;
Field v. Clark, 143 U. S. 649, 36 L. Ed. 294, 310;
Lee v. Hoffman, 182 Iowa 1216, 1220, 1221, 1226, 1227, 166 N. W. 565;
State v. Yopp, 97 N. C. 477, 2 S. E. 458;
Fischer v. St. Louis, 194 U. S. 361, 48 L. Ed. 1018, 1023;
Ex parte Fiske, 72 Cal. 125, 13 Pac. 310;
Ex parte Spencer, 149 Cal. 396, 86 Pac. 896, 898;
Ex parte Weber, 149 Cal. 392, 86 Pac. 809;
City of Eureka v. Wilson, 15 Utah 53, 48 Pac. 41, 44;
State v. Wolf, 145 N. C. 440, 59 S. E. 40.

VII

The fact that the amendment to section 5259, Oregon Laws, contains new provisions in conflict with a succeeding section of the act, which was not amended, does not invalidate the amendment.

Section 20, Article IV, Constitution of Oregon;
Cooley's Constitutional Limitations (7th Ed.), pages 246-247;

Gantenbein v. West, 74 Or. 334;
Kiernan v. Portland, 57 Or. 454, 463;
Peterson v. Lewis, 78 Or. 641;
Southern Pacific Co. v. Campbell, 189 Fed. 696;
Hirschfield v. McCullagh, 64 Or. 502;
Ex parte Case, 70 Or. 291;
Simon v. Northup, 27 Or. 487, 503-506;
Fisher v. McGirr, 1 Gray 1;
Commonwealth v. Clapp, 5 Gray 97, 100;
In re Groff, 21 Neb. 647, 33 N. W. 426;
Donnersberger v. Prendergast, 128 Ill. 229, 21 N. E. 1, 2;
Rood v. Cargar, 49 Cal. 117;
State v. Phenline, 16 Or. 107, 109;
Ex parte Howe, 26 Or. 181, 184;
Murphy v. Salem, 49 Or. 54, 58;
Lewis' Sutherland Statutory Construction (2d Ed.), Vol. 1, p. 236, section 139;
Newman v. State, 101 Ga. 534, 28 S. E. 1005;
State v. Am. Sugar Ref. Co., 106 La. 553, 31 So. 181;
Horkey v. Kendall, 53 Neb. 522, 73 N. W. 953, 68 Am. St. Rep. 623.

ARGUMENT

The statute involved in this proceeding is intended to compel all children between the ages of eight and sixteen years to attend public schools, with certain exceptions not material to this case. It applies to parents, guardians or other persons having control or charge or custody of such children, and provides a penalty.

It is not contended that appellee is directly affected in the sense that it could be punished for violation of the statute. Its claim of right to institute this suit is based upon property damage which it alleges will result to it from the enforcement of the law and is now being sustained by it by reason of threats on the part of the appellants to enforce the law.

It might be urged that under such circumstances the appellee cannot invoke the aid of this court to protect it from incidental injury and damages that may result from the enforcement or threatened enforcement of the law.

Rosenthal v. New York, 226 U. S. 260, 271, 57 L. Ed. 212, 217, Ann. Cas. 1914B, 71, 74;

Jeffrey Mfg. Co. v. Blagg, 235 U. S. 571, 576, 59 L. Ed. 364, 368;

Arkadelphia Mill Co. v. St. Louis Co., 249 U. S. 134, 149, 63 L. Ed. 517, 526;

Middletown v. Texas Power Co., 249 U. S. 152, 157, 63 L. Ed. 527, 531;

Underwood Typewriter Co. v. Chamberlain, 254 U. S. 113, 65 L. Ed. 165, 170;

Marye v. Parsons, 114 U. S. 325, 29 L. Ed. 205, 206;

Hagood v. Southern, 117 U. S. 52, 29 L. Ed. 805;

Ex parte Ayres, 123 U. S. 443, 31 L. Ed. 216, 226;

McCabe v. Atchison Ry., 235 U. S. 151, 162, 59 L. Ed. 169, 174;

Business Men's League v. Waddill, 143 Mo. 495, 45 S. W. 262, 40 L. R. A. 501;

Clark v. Kansas City, 176 U. S. 114, 20 Sup. Ct. Rep. 284, 44 L. Ed. 392, 396;

Hooker v. Burr, 194 U. S. 415, 48 L. Ed. 1046, 1050;
Cram v. Chicago, etc., R. Co., 85 Neb. 586, 19 Ann. Cas. 170;
Hampton v. St. Louis Co., 227 U. S. 456, 469, 57 L. Ed. 596, 600;
City of Lampasas v. Bell, 180 U. S. 276, 283, 45 L. Ed. 527, 530;
Chadwick v. Kelly, 187 U. S. 540, 546, 47 L. Ed. 293, 295;
Cronin v. Adams, 192 U. S. 108, 114, 48 L. Ed. 365, 368;
New York v. Reardon, 204 U. S. 152, 160, 51 L. Ed. 415, 422;
Southern Ry. v. King, 217 U. S. 524, 534, 54 L. Ed. 868, 872;
Plymouth Coal Co. v. Pennsylvania, 232 U. S. 531, 544, 58 L. Ed. 713, 719;
Lee v. New Jersey, 207 U. S. 67, 70, 52 L. Ed. 106, 107;
Oliver Iron Co. v. Lord, 262 U. S. 172, 43 Sup. Ct. Rep. 526, 67 L. Ed. 929.

However, it will be to the manifest interest of all persons concerned if the court will disregard all technical questions involving delay and proceed to the determination of the constitutional question. With that end in view, argument upon any question regarding the incapacity of appellee to bring this suit and whether or not the suit is premature is waived.

Point No. I

It was early announced by this court that it is "easier to determine whether particular cases come within the general scope of the power than to give an abstract definition of the power itself which will be in all respects accurate".

Stone v. Mississippi, 16 Wall. 62, 25 L. Ed. 1079, 1080;

N. O. Gas Light Co. v. Louisiana Light, etc., Mfg. Co., 115 U. S. 650, 29 L. Ed. 516, 520.

So many different conditions and circumstances have required consideration that this appellant will presume to take time and space necessary for a brief resume of the principles announced by the court in some of the leading cases.

In *Munn v. People of Illinois*, 94 U. S. 278, 24 L. Ed. 77, 83, the court, by Mr. Chief Justice Waite, in discussing the scope of the fourteenth amendment, said:

> "When one becomes a member of society, he necessarily parts with some rights or privileges, which, as an individual not affected by his relations to others, he may retain. 'A body politic,' as amply defined in the preamble of the constitution of Massachusetts, 'is a social compact by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good'."

In *Boston Beer Co. v. Massachusetts*, 97 U. S. 25, 24 L. Ed. 989, 992, this court, by Mr. Justice Bradley, said:

> "Whatever differences of opinion may exist as to the extent and boundaries of the police power, and however difficult it may be to render a satisfactory defini-

tion of it, there seems to be no doubt that it does extend to the protection of the lives, health and property of the citizens, and to the provision of good order and the public morals."

In *Mugler v. Kansas*, 123 U. S. 562, 31 L. Ed. 205, 210, the court, by Mr. Justice Harlan, said:

"But by whom, or by what authority, is it to be determined whether the manufacture of particular articles of drink, either for general use or for the personal use of the maker, will injuriously affect the public? Power to determine such questions, so as to bind all, must exist somewhere; else society will be at the mercy of the few, who, regarding only their own appetities or passions, may be willing to imperil the peace and security of the many provided only they are permitted to do as they please. Under our system that power is lodged with the legislative branch of the government. It belongs to that department to exert what are known as the police powers of the state, and to determine, primarily, what measures are appropriate or needful for the protection of the public morals, the public health, or the public safety."

In *Powell v. Pennsylvania*, 127 U. S. 678, 32 L. Ed. 253, 257, the court, by Mr. Justice Harlan, said:

"* * * The legislature of Pennsylvania, upon the fullest investigation, as we must conclusively presume, and upon reasonable grounds, as must be assumed from the record, has determined that the prohibition of the sale, or offering for sale, or having in possession to sell, for purposes of food, of any article manufactured out of oleaginous substances or compounds other than those produced from unadulterated milk or cream from unadulterated milk, to take the place of butter produced from unadulterated milk or cream from unadulterated milk, will promote the public health, and prevent frauds in the sale of such articles. If all that can be said of

this legislation is that it is unwise, or unnecessarily oppressive to those manufacturing or selling wholesome oleomargarine, as an article of food, their appeal must be to the legislature, or to the ballot box, not to the judiciary. The latter can not interfere without usurping powers committed to another department of government.

"It is argued, in behalf of the defendant, that if the statute in question is sustained as a valid exercise of legislative power, then nothing stands in the way of the destruction by the legislative department of the constitutional guarantees of liberty and property. But the possibility of the abuse of legislative power does not disprove its existence. That possibility exists even in reference to powers that are conceded to exist. Besides, the judiciary department is bound not to give effect to statutory enactments that are plainly forbidden by the constitution. This duty, the court has said, is always one of extreme delicacy; for, apart from the necessity of avoiding conflicts between coordinate branches of the government, whether state or national, it is often difficult to determine whether such enactments are within the powers granted to or possessed by the legislature. Nevertheless, if the incompatibility of the constitution and the statue is clear or palpable, the courts must give effect to the former. And such would be the duty of the court if the state legislature, under the pretense of guarding the public health, the public morals, or the public safety, should invade the rights of life, liberty, or property, or other rights, secured by the supreme law of the land."

In *Jacobson v. Massachusetts,* 197 U. S. 11, 49 L. Ed. 643, 651, the court, by Mr. Justice Harlan, said:

"* * * We must assume that, when the statute in question was passed, the legislature of Massachusetts was not unaware of these opposing theories, and was compelled, of necessity, to choose between them. It was not compelled to commit a matter involving the public health and safety to the final decision of a court or jury. It is no part of the function of a court or a jury to determine which one of two modes was likely to be the most effective for the protection of the public against disease. That was for the legislative department to determine in the light of all the information it had or could obtain. It could not properly abdicate its function to guard the public health and safety. The state legislature proceeded upon the theory which recognized vaccination as at least an effective, if not the best known, way to which to meet and suppress the evils of a smallpox epidemic that imperiled an entire population. Upon what sound principles as to the relations existing between the different departments of government can the court review this action of the legislature? If there is any such power in the judiciary to review legislative action in respect of a matter affecting the general welfare, it can only be when that which the legislature has done comes within the rule that, if a statute purporting to have been enacted to protect the public health, the public morals, or the public safety, has no real or substantial relation to those objects, or is, beyond all question, a plain, palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the Constitution. *Mugler v. Kansas,* 123 U. S. 623, 661, 31 L. Ed. 205, 210, 8 Sup. Ct. Rep. 273; *Minnesota v. Barber,* 136 U. S. 313, 320, 34 L. Ed. 455, 458, 3 Inters. Com. Rep. 185, 10 Sup. Ct. Rep. 862; *Atkin v. Kansas,* 191 U. S. 207, 223, 48 L. Ed. 148, 158, 24 Sup. Ct. Rep. 124."

In *Interstate Consol. Street R. Co. v. Massachusetts*, 207 U. S. 79, 52 L. Ed. 111, this court, by Mr. Justice Holmes, said (page 115, L. Ed.):

"If the fourteenth amendment is not to be a greater hamper upon the established practices of the states in common with other governments that I think was intended, they must be allowed a certain latitude in the minor adjustments of life, even though by their action the burdens of a part of the community are somewhat increased. The traditions and habits of centuries were not intended to be overthrown when that amendment was passed.

"Education is one of the purposes for which what is called the police power may be exercised. *Barbier v. Connolly*, 113 U. S. 27, 31, 28 L. Ed. 923, 924, 5 Sup. Ct. Rep. 357. Massachusetts always has recognized it as one of the first objects of public care. * * *"

In *McLean v. Arkansas*, 211 U. S. 539, 53 L. Ed. 315, 319, this court, by Mr. Justice Day, said:

"The legislature, being familiar with local conditions, is, primarily, the judge of the necessity of such enactments. The mere fact that a court may differ with the legislature in its views of public policy, or that judges may hold views inconsistent with the propriety of the legislation in question, affords no ground for judicial interference, unless the act in question is unmistakably and palpably in excess of legislative power. *Jacobson v. Massachusetts, supra, Mugler v. Kansas*, 123 U. S. 623, 31 L. Ed. 205, 8 Sup. Ct. Rep. 273; *Minnesota v. Barber*, 136 U. S. 313, 320, 34 L. Ed. 455, 458, 3 Inters. Com. Rep. 185, 10 Sup. Ct. Rep. 862; *Atkin v. Kansas*, 191 U. S. 207, 223, 48 L. Ed. 148, 158, 24 Sup. Ct. Rep. 124.

"If the law in controversy has a reasonable relation to the protection of the public health, safety, or welfare, it is not to be set aside because the judiciary may be of opinion that the act will fail of its purpose, or because it is thought to be an unwise exertion of the authority vested in the legislative branch of the government."

In *Middleton v. Texas Power & L. Co.*, 249 U. S. 152, 63 L. Ed. 527, 531, this court by Mr. Justice Pitney, said:

> "There is a strong presumption that a legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience, and that its discriminations are based upon adequate grounds. The equal protection clause does not require that state laws shall cover the entire field of proper legislation in a single enactment. If one entertained the view that the act might as well have been extended to other classes of employment, this would not amount to a constitutional objection. *Rosenthal v. New York*, 226, U. S. 260, 271, 57 L. Ed. 212, 217, 33 Sup. Ct. Rep. 27. Ann. Cas. 1914B, 71; *Patsone v. Pennsylvania*, 232 U. S. 138, 144, 58 L. Ed. 539, 543, 34 Sup. Ct. Rep. 281; *Missouri, K. & T. R. Co. v. Cade*, 233 U. S. 642, 649, 650, 58 L. Ed. 1135, 1138, 34 Sup. Ct. Rep. 678; *International Harvester Co. v. Missouri*, 234 U. S. 199, 215, 58 L. Ed. 1276, 1283, 52 L. R. A. (N. S.) 525, 34 Sup. Ct. Rep. 859; *Koekee Consol. Coke Co. v. Taylor*, 234 U. S. 224, 227, 58 L. Ed. 1288, 34 Sup. Ct. Rep. 856; *Miller v. Wilson*, 236 U. S. 373, 384, 59 L. Ed. 628, 632, L. R. A. 1915F, 829, 35 Sup. Ct. Rep. 342.
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> "The burden being upon him who attacks a law for unconstitutionality, the courts need not be ingenious in searching for grounds of distinction to sustain a classification that may be subjected to criticism. * * *"

Point No. II

The third ground of illegality alleged in paragraph fifteen of appellee's amended complaint reads as follows:

> "3. That said pretended law attempts to impair the obligation of the contract between the State of Oregon and the plaintiff arising out of the aforesaid corporation laws of said state and the incorporation of the plaintiff thereunder, in violation of section 10 of article I of the Constitution of the United States, and of section 21 of article I of the Constitution of the State of Oregon."

In answer to that objection, citations from a few of the cases in which it has been considered by this court follow.

Boston Beer Co. v. Massachusetts, 97 U. S. 25; 24 L. Ed. 989, 992:

> "* * * The plaintiff in error boldly takes the ground, that, being a corporation it has a right, by contract, to manufacture and sell beer forever, notwithstanding and in spite of any exigencies which may occur in the morals or the health of the community, requiring such manufacture to cease. We do not so understand the rights of the plaintiff. The legislature had no power to confer any such rights.
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> * * * * * * *
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> "The legislature can not, by any contract, divest itself of the power to provide for these objects. They belong emphatically to that class of objects which demand the application of the maxim, solus populi suprema lex; and they are to be attended and provided for by such appropriate means as the legislative discretion may devise. That discretion can no more be bargained away than the power itself. *Boyd v. Alabama* (Ante. 302)."

Stone v. Mississippi, 101 U. S. 814, 25 L. Ed. 1079, 1080:

"All agree that the legislature can not bargain away the police power of a state. 'Irrevocable grants of property and franchises may be made if they do not impair the supreme authority to make laws for the right government of the state; but no legislature can curtail the power of its successors to make such laws as they may deem proper in matters of police.' *Metropolitan Bd. of Excise v. Barrie*, 34 N. Y., 657; *Boyd v. Alabama*, 94 U. S. 645, 24 L. Ed. 302. Many attempts have been made in this court and elsewhere to define the police power, but never with entire success. It is always easier to determine whether a particular case comes within the general scope of the power, than to give an abstract definition of the power itself which will be in all respects accurate. No one denies, however, that it extends to all matters affecting the public health or the public morals. * * *"

Thornton v. Duffy, 254 U. S., 361, 65 L. Ed., 304, 309:

"We repeat, we must accept the decision of the court as the declaration of the legislation and the requirement of the Constitution of the state, as much a part of both as if expressed in them (*Douglass v. Pike County*, 101 U. S. 677, 25 L. Ed. 968), and we are unable to yield to the contention that the legislation or the requirement transcends the power of the state, or in any way violates the Constitution of the United States. The law expressed the constitutional and legislative policy of the state to be that the compensation to workmen for injuries received in their employment was a matter of public concern, and should not be left to the individual employer or employe, or be dependent upon or influenced by the hazards of controversy or litigation, or inequality of conditions. There was an attempt at the accommodation of the new policy to old conditions in the concession to employers to deal directly with their

employes, but there was precaution against failure in the provision of section 22, giving discretion to the commission to withdraw the concession. After a few years' experience, that discretion was turned into a duty, and by the amendment of March 20, 1917, the concession was taken away from those employers who indemnified themselves by insurance. This was considered necessary to execute the policy of the state, and we are unable to yield to the contention that property rights or contract rights had accrued against it. To assert that the first steps of a policy make it immutable is to assert that imperfections and errors in legislation become constitutional rights. This is a narrow conception of sovereignty. It is, however, not new, and we have heretofore been invoked to pronounce judgment upon it. Complying, we said that an exercise of public policy can not be resisted because of conduct or contracts done or made upon the faith of former exercises of it, upon the ground that its later exercises deprive of property or invalidate those contracts. *Louisville & N. R. Co. v. Mottley,* 219 U. S. 467, 55 L. Ed. 297, 34 L. R. A. (N. S.) 671, 31 Sup. Ct. Rep. 265."

Chicago L. Ins. Co. v. Needles, 113 U. S. 574, 28 L. Ed. 1084, 1087:

"The case upon the merits, so far as they involve any question of which this court may take cognizance, is within a very narrow compass. The main proposition of the counsel is that the obligation of the contract which the company had with the State, in its original and amended charter, will be impaired if that company be held subject to the operation of subsequent statutes, regulating the business of life insurance and authorizing the courts, in certain contingencies, to suspend, restrain or prohibit insurance companies incorporated in Illinois from further continuance in business. This position can not be sustained, consistently with the power which the State has, and upon every ground of public policy must always have, over corporations of her own creation.

Nor is it justified by any reasonable interpretation of the language of the company's charter. The right of the plaintiff in error to exist as a corporation, and its authority, in that capacity, to conduct the particular business for which it was created, were granted, subject to the condition that the privileges and franchises conferred upon it should not be abused, or so employed as to defeat the ends for which it was established, and that, when so abused or misemployed, they may be withdrawn or reclaimed by the State, in such way and by such modes of procedure as are consistent with law. Although no such condition is expressed in the company's charter, it is necessarily implied in every grant of corporate existence. *Terrett v. Taylor*, 9 Cranch, 51; Ang. & Ames, Corp. (9th ed.), sec. 774, note."

Point No. III

The inherent right of parents to the custody and control of their minor children is recognized and protected in every civilized nation. No more intimate relation exists in human society, and the life and welfare of such children are so dependent upon the protection and care of the parents as to afford no basis for argument regarding the nature of the parents' rights. It is equally well established that in matters relating to the general welfare of such children and of the public the rights of the parents are subject to the paramount right of the state to exercise control over such minors. This is well illustrated by the decisions of this court and numerous decisions of other federal courts, and of state courts, relating to the hours and places of employment of minors, compulsory vaccination, compulsory school laws, the custody of the children of divorced parents and of those who are incompetent mentally, morally or otherwise, to afford them such care and protection as the state may deem proper and necessary.

The only limitation upon such power on the part of the state is that it shall be exercised for a reasonable purpose and bear some reasonable and necessary relation to the health, morals or welfare of the child and of the state.

The superior right of the state to prescribe qualifications of teachers, uniform text books, courses of study, and other things which affect the personal rights and interests of pupils and parents is well established.

Donahoe v. Richards, 38 Me. 379, 61 Am. Dec. 256 272, 273, 274, 275;
O'Connor v. Hendrick, 184 N. Y. 421, 77 N. E. 712, 7 L. R. A. (N. S.) 402.

RECOGNIZED CONTROL OF EDUCATION

In accordance with the foregoing principles, we are accustomed in this country to recognize the control by the state of the education of children.

Berea College v. Commonwealth, 123 Ky. 209, 94 S. W. 623, 13 Ann. Cas. 337.

In this case the Kentucky court upheld the validity of a statute requiring the segregation of the white and the colored races in the schools.

It is also well settled that the state in the exercise of the police power may require the compulsory education of children. Our research discloses the significant circumstance that there are but few cases in which this principle has been decided. The reason doubtless is that the American people with almost entire unanimity have acquiesced in the enactment and enforcement of compulsory education laws. Such authorities as there are bearing on the question speak with entire unanimity and

the principle on which some of them are decided is broad enough to uphold the constitutionality of the statute now in question.

There is much significance in the fact that every state in the Union has a statute providing for the compulsory education of children. In five of the states the statutes resemble the Oregon statute in that attendance at a private school is not of itself a compliance with the statutory requirements. See

General Statutes of Connecticut of 1918, vol. 1, sec. 835, 839.

Laws of Maryland, 1916, c. 506, sub-chapter 21, sec. 162.

Birdseye, Cumming & Gilbert's Consolidated Laws of New York, 2d Ed. vol. 2, article 23, sec. 623.

Laws of Nevada, 1920-1921, c. 157, sec. 1, amending sec. 203 of the Act of March 20, 1911.

General Laws of Vermont, 1917, sec. 1254.

35 Cyc. 1122.

"A compulsory education law is not unconstitutional as an invasion of the natural right of a parent to govern and control his own children, as it is competent for the legislature to compel parents to perform the natural duty of education owed to their children."

State v. Jackson, 71 N. H. 552, 53 Atl. 1021, 60 L. R. R. A. 739.

This case involved the validity of the compulsory school law of New Hampshire, for a violation of which the defendant had been convicted. We quote from the opinion of the court:

"The motion to quash the complaint on the ground that the statute upon which it was founded is unconstitutional was properly denied. The statute is as follows:

'Every person having the custody and control of a child between the ages of eight and fourteen years, residing in a school district in which a public school is annually taught, shall cause such child to attend the public school all the time such school is in session, unless the child shall be excused by the school board of the district because his physical or mental condition is such as to prevent his attendance for the period required, or because he was instructed in the English language in a private school approved by the school board, for a number of weeks equal to that in which the public school was in session, in the common English branches, or, having acquired those branches, in other more advanced studies. Any person who does not comply with the requirements of this section shall be fined $10 for the first offense, and $20 for every subsequent offense.' Pub. Stat. chap. 93, sec. 14; Laws 1901, chap, 61, sec. 1. That education of the citizen is essential to the stability of the state is a proposition too plain for discussion. As a mere generalization of our own, it would command immediate and universal assent. But it rests upon a firmer foundation. The constitution declares that 'knowledge and learning, generally diffused through a community' are essential to the preservation of a free government. Const. Art. 82. * * *

"Being without brief or argument from the defendant, we are not advised upon what ground he asserts the unconstitutionality of the act. Certainly, it is not unconstitutional, merely because, in obedience to the mandate of the constitution, and for 'the preservation of a free government,' it interferes in some measure with the natural right of parental dominion. 'When men enter into a state of society, they surrender up some of their natural rights to that society, in order to insure the protection of others' (Bill of Rights, Art. 3), and subject themselves to innumerable restrictions and regulations for the common good."

The court then proceeds to construe the statute as impliedly permitting a parent to keep a child out of school when the child's health required such absence. The court then proceeds to say:

> "One whose child is stricken by some malady, making detention from school reasonably necessary in defense of the child's life, breaks no law of this jurisdiction by hastening for doctors and nurses instead of to the board of education. On the other hand, if he keeps his child from school merely to suit his own or his child's pleasure, or for any other reason not within the exceptions provided by the act or guaranteed by the constitution, he must suffer the penalty. Indeed, as thus limited, the law is a decided invasion of the parental domain; but, being repugnant to no provision of the constitution, and being for 'the benefit and welfare of this state, and for the governing and ordering thereof,' the citizen, in fulfillment of the social compact, must yield submission and obedience. *School Board v. Jackson*, L. R. 7 Q. B. Div. 502; *Burdick v. Babcock*, 31 Iowa, 562, 568-571; *Donahoe v Richards*, 38 Me. 379, 391, 395-397, 61 Am. Dec. 256; Schouler, Dom. Rel. 235."

It is true that the question mooted in the above case was whether or not the court could read into the statute the implication that a sick child was excused from attendance at school. The case nevertheless involved the validity of the New Hampshire statute and the court of necessity held the statute valid and applicable. The statute by its terms applied to all of the children in the state except those who were excused by the school board. There was no requirement in the statute that the school board should excuse any child and the statute therefore was on all fours with the Oregon statute in requiring attendance at the public schools.

Commonwealth v. *Roberts*, 159 Mass. 372, 34 N. E. 402.

The Massachusetts compulsory education law contained the following provisions:

> "* * * But, if such child has attended for a like period of time a private day school approved by the school committee of such city or town, or if such child has been otherwise instructed for a like period of time in the branches of learning required by law to be taught in the public schools, * * * such penalties shall not be incurred."

The defendant was charged with failure to send his child to the public school in accordance with the requirements of the statute. He offered to show that the child had been instructed in the branches of learning required by law to be taught in the public schools in a private day school not approved by the school committee, application for such approval having been made and refused. The court refused to admit the testimony and the defendant was convicted. In construing the statute the Massachusetts court said:

> "Sending a child to a private day school approved by the school committee is enough to comply with the requirement of the law without further inquiry. Pub. St. c. 47, sec. 2, prescribes what private day schools may be so approved. But if the person having a child under his control, instead of sending him to a public school, or to a private day school approved by the school committee, prefers to have him instructed otherwise, it will be incumbent on him to show that the child has been instructed for the specified period in the required branches of learning, unless the child has already acquired them. This permits instruction in those branches in schools or academies situated in the same city or town or elsewhere, or instruction by a private tutor or governess, or by the parents themselves, provided it is given in good faith, and is sufficient in extent.

> If the school committee has not approved of a particular school, or has expressly refused to approve of it, then the person having control of a child, if he sends the child to that school, must take the responsibility of being able to prove that he has been sufficiently and properly instructed there. He has no such responsibility if he sends the child to a private day school approved by the school committee. The evidence which was excluded should have been admitted. Verdict set aside."

State v. Counort, 69 Wash. 321, 124 Pac. 910, 41 L. R. A. (N. S.) 95.

This case upholds the validity of the compulsory education statute of the state of Washington. The case holds that a father cannot defend a criminal prosecution by showing that he is qualified to teach his daughters and was in fact conducting a school for them in his home at the time when he was charged with failing to send them to the public school.

Meyer v. Nebraska, 262 U. S. 390; 67 L. Ed. 1042, 1046.

The opinion of Mr. Justice McReynolds in the above case, handed down on the 4th of June, 1923, contains the following sentence:

> "The power of the state to compel attendance at some school and to make reasonable regulations for all schools, including a requirement that they shall give instructions in English, is not questioned."

A common school education is a benefit to any child. It is competent for the state to go beyond the established doctrine of assuring to a parent the right to educate his children in a public school. The state is well within its constitutional powers in assuring to every child an education in the public schools.

The textbooks recognize the validity of compulsory education statutes.

In *State v. Shorey*, 48 Or. 396, 398, the constitutionality of laws prohibiting the employment of children under 16 years of age before the hour of seven in the morning or after the hour of six at night, or for longer than ten hours in any one day, or more than six days in any one week, was involved. The court, by Mr. Justice Bean, in referring to the effect of the fourteenth amendment of the Constitution of the United States upon the said statute, said:

> "These constitutional provisions do not limit the power of the state to interfere with the parental control of minors, or to regulate the right of a minor to contract, or of others to contract with him; 2 Tiedeman, State & Fed. Con. sec. 195. It is competent for the state to forbid the employment of children in certain callings merely because it believes such prohibition to be for their best interest, although the prohibited employment does not involve a direct danger to morals, decency, or of life or limb. Such legislation is not an unlawful interference with the parents' control over the child or right to its labor, nor with the liberty of the child; *People v. Ewer*, 141 N. Y. 129 (36 N. E. 4, 25 L. R. A. 794, 38 Am. St. Rep. 788), affirming *In re Ewer*, 70 Hun, 239, (24 N. Y. Supp. 500).
>
> "2. Laws prohibiting the employment of adult males for more than a stated number of hours per day or week are not valid unless reasonably necessary to protect the public health, safety, morals or general welfare, because the right to labor or employ labor on such terms as may be agreed upon is a liberty or property right guaranteed to such persons by the Fourteenth Amendment to the Constitution of the United States and with which the state can not interfere: *Lochner v. New York*, 198 U. S. 45 (25 Sup. Ct. 539, 49 L. Ed. 937). But laws regulating the right of minors to contract do not come within this principle. They are not sui juris and can only contract to a limited extent. They are wards of the state and subject to its control. As to them, the state stands in the

position of parens patriae, and may exercise unlimited supervision and control over their contracts, occupation and conduct, and the liberty and right of those who assume to deal with them. This is a power which inheres in the government for its own preservation and for the protection of the life, person, health and morals of its future citizens. * * *"

In *Stettler v. O'Hara*, 69 Or. 519, 532, it is said:

"When new conditions arise which injuriously affect the health or morals or welfare of the public, we no longer say that we will expand the police power to reach and remedy the evil. Instead, we say that a new evil has arisen which an old principle of government—the police power—will correct."

In *Gibbons v. Gibbons*, 75 Or. 500, 503, a suit involving the custody and support of minor children of divorced parents, the court said:

"1. Minor children of divorced parties remain the wards of the court which dissolved the bonds of matrimony, and, as such children were not parties to the suit, they are not bound by any decree as to the source or extent of their maintenance: *McFarlane v. McFarlane*, 43 Or. 477, 484 (75 Pac. 139). The welfare of these infants is paramount to the rights of any other person, and their support and education should be borne equally by their parents if they are able, but, if not, then by the father or mother who is financially responsible. The court granting the decree of divorce is authorized to modify it at any time so as to provide for the care, custody and support of the minors, and may impose such burden upon either or both parties to the suit: (Section 514, L. O. L.)"

In *Merges v. Merges*, 94 Or. 246, 252, it is said:

"Primarily, therefore, under our statute, the parents have equal rights to the custody of their children. Where this is in dispute it is universally conceded that

the controlling consideration, paramount above all others, is the welfare of the child. It is not a chattel like pigs, chickens or furniture, to be divided between the divorce litigants on the basis of monetary value; neither is its custody to be made the vehicle for a continuation of their antagonisms and resentments toward each other. It is a matter of almost tragic regret that parents should break up their home by their bickerings and deprive their child of that nurture and admonition that congenial parents can give. But such things happen, and out of the wreck the courts must do the best possible under the circumstances for the welfare of the offspring. The preferences of the parents, whether founded in spite or in real affection, must yield to the best interests of the child. The authorities are practically unanimous on this subject. The principle is conceded in the argument and it is not necessary to note precedents in support of this conclusion."

State v. Bailey, 157 Ind. 324, 59 L. R. A. 435, involved a question of the validity of a compulsory education law which was assailed upon the ground that it invaded the natural right of a man to govern and control his own children. At page 437 of the report in L. R. A. the court said:

"The next question presented is whether the statute is an unauthorized invasion of the natural rights of the appellee as a parent. The natural rights of a parent to the custody and control of his infant child are subordinate to the power of the state, and may be restricted and regulated by municipal laws. One of the most important natural duties of the parent is his obligation to educate his child, and this duty he owes, not to the child only, but to the commonwealth. If he neglects to perform it, or wilfully refuses to do so, he may be coerced by law to execute such civil obligation. The welfare of the child and the best interests of society require that the state shall exert its sovereign authority to secure to

the child the opportunity to acquire an education. Statutes making it compulsory upon the parent, guardian, or other person having the custody and control of children to send them to public or private schools for longer or shorter periods during certain years of the life of such children have not only been upheld as strictly within the constitutional power of the legislature, but have generally been regarded as necessary to carry out the express purposes of the Constitution itself. Ind. Const. art. 8, secs. 1-8; *Hochheimer, Custody of Infants*, sec. 79; Fraser, Parent & Child, 77; *Bennet v. Bennet*, 13 N. J. Eq. 114; *English v. English*, 32 N. J. Eq. 738; *Re Bort*, 25 Kan. 308, 37 Am. Rep. 255; *People v. Ewer*, 141 N. Y. 129, 25 L. R. A. 794, 36 N. E. 4; *Sheers v. Stein*, 75 Wis. 44, 5 L. R. A. 781, 43 N. W. 728; *Lally v. Fitz Henry*, 85 Iowa, 49, 16 L. R. A. 681, 51 N. W. 1155. 'The matter of education is deemed a legitimate function of the state, and, with us, is imposed upon the legislature as a duty by imperative provisions of the Constitution. . . . The subject has always been regarded as within the purview of legislative authority. How far this interference should extend is a question, not of constitutional power for the courts, but of expediency and propriety, which it is the sole province of the legislature to determine. The judiciary has no authority to interfere with this exercise of legislative judgment, and to do so would be to invade the province which by the constitution is assigned exclusively to the lawmaking power.' *State v. Clottu*, 33 Ind. 409, 411. To carry out the enlightened and comprehensive system of education enjoined by the Constitution of this state, a vast fund, dedicated exclusively to this purpose, has been set apart. Revenues to the amount of more than $2,000,000 annually are distributed among the school corporations of the state. No parent can be said to have the right to deprive his child of the advantages so provided, and to defeat the purposes of such munificent appropriations."

In *People v. Ewer*, 141 N. Y. 129, 36 N. E. 4, 25 L. R. A. 794, the constitutionality of a statute prohibiting the employment or exhibition of girls under 14 years of age as dancers or in theatrical exhibitions was involved. The court, by Mr. Justice Gray, said (page 797 in 25 L. R. A.):

> "The proposition is indisputable that the custody of the child by the parent is within legislative regulation. The parent, by natural law, is entitled to the custody and care of the child, and as its natural guardian, is held to the performance of certain duties. To society, organized as a state, it is a matter of paramount interest that the child shall be cared for, and that the duties of support and education be performed by the parent or guardian, in order that the child shall become a healthful and useful member of the community. It has been well remarked that the better organized and trained the race the better it is prepared for holding its own. Hence it is that laws are enacted looking to the compulsory education by parents of their children, and to their punishment for cruel treatment; and which limit and regulate the employment of children in the factory and the workshop to prevent injury from excessive labor. It is not, and can not be disputed, that the interest which the state has in the physical, moral, and intellectual well-being of its members warrants the implication and the exercise of every just power which will result in preparing the child in future life to support itself, to serve the state, and in all the relations and duties of adult life to perform well and capably its part."

Point No. IV

The statute in nowise interferes with the custody of children. No parent who is now entitled to the custody of his children will lose such custody under the operations of this statute. The statute in nowise prevents a parent from instructing his children in any subject what-

soever. It has no direct reference or application to the operation of appellee's school. Appellee may still operate its school. During the entire school day it may instruct children under eight years of age and over 16 years of age. It may board children between these ages and, after they have attended public school during the hours at which such attendance is compulsory, appellee may exercise its control over these children in any proper way. They may receive such religious instruction as their parent, guardian or custodian may elect. Nothing in the statute purports to interfere with the religious convictions either of parents or of children.

The statute, we submit, is clearly valid within the principles announced in the foregoing authorities.

RELIGIOUS LIBERTY

The federal constitution does not guarantee religious liberty to the citizens of the several states. It merely prohibits the enactment by Congress of any law establishing a religion or prohibiting the free exercise thereof. A contention that a state statute violates the religious liberty of a citizen does not therefore raise a federal question.

Permoli v. New Orleans, 3 How. 589, 609, 11 L. Ed. 739, 748.
Brunswick Co. v. Evans, 228 Fed. 991.
People v. Board of Education, 245 Ill. 335, 19 Ann. Cas. 220, 29 L. R. A. (N. S.) 442, 92 N. E. 251.
Swafford v. Keaton, 23 Ga. App. 238, 98 S. E. 122.
State v. Mockus, 113 Atl. 39, 44 (Me.).

The books are full of cases in which the contention has been advanced that the religious convictions of a party have required him to break the law, and the conclusion has been advanced upon these premises that the laws in question are unconstitutional. The courts have everywhere refused to uphold this contention. Perhaps the leading case on the subject is

Reynolds v. U. S., 98 U. S. 145, 25 L. Ed. 244, 250.

This case involved the constitutionality of the Edmunds act prohibiting polygamy. The defendant was a Mormon who professed belief that it was his religious duty to live polygamously, but the court refused to uphold this defense. We quote from the opinion:

> "In our opinion the statute immediately under consideration is within the legislative power of congress. It is constitutional and valid as prescribing a rule of action for all those residing in the territories, and in places over which the United States have exclusive control. This being so, the only question which remains is, whether those who make polygamy a part of their religion are excepted from the operation of the statute. If they are, then those who do not make polygamy a part of their religious belief may be found guilty and punished, while those who do must be acquitted and go free. This would be introducing a new element into criminal law. Laws are made for the government of actions, and while they can not interfere with mere religious belief and opinions, they may with practices. Suppose one believed that human sacrifices were a necessary part of religious worship, would it be seriously contended that the civil government under which he lived could not interfere to prevent a sacrifice? Or if a wife religiously believed that it was her duty to burn herself upon the funeral pyre of her dead husband, would it be beyond the power of the civil government to prevent her carrying her belief into practice?

"So here, as a law of the organization of society under the exclusive dominion of the United States, it is provided that plural marriages shall not be allowed. Can a man excuse his practices to the contrary because of his religious belief? To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself. Government could exist only in name under such circumstances."

RELIGIOUS GARB

The courts have also upheld as constitutional statutes forbidding the use of a religious garb in the schools. The defense of religious conviction has been asserted to restrain the enforcement of these statutes. The best decision bearing on this subject which we have found is *Commonweath* v. *Herr*, 229 Pa. St. 132, 78 Atl. 68, 71-72.

"We can not assent to the proposition that the intent or effect of the legislation is to disqualify any person from employment as a teacher 'on account of his religious sentiments.' It is directed against acts, not beliefs, and only against acts of the teacher whilst engaged in the performance of his or her duties as such teacher. It is true the acts prohibited are those which may indicate, and indeed may be dictated by, the religious sentiments of the teacher. Therefore, we are led to the broader inquiry whether this constitutes an infringement of the 'natural and indefeasible right of all men to worship Almighty God according to the dictates of their own consciences,' or contravenes the accompanying declaration that 'no human authority can, in any case whatever, control or interfere with the rights of conscience.' No man's religious belief may be interfered with by law. * * *

"But broad as are these declarations of our constitution, and sacred as are the religious freedom and the rights of conscience they secure, yet it must be apparent

to any person upon reflection, and has been repeatedly declared by the highest judicial authority, that they do not mean unqualifiedly that it is beyond the power of the legislature to enact any law which will restrain individuals from doing that which, if it were not for the law, their consciences would teach them to be their moral or religious duty. Indeed, it is impossible to see how civil government could exist, if the dictates of the individual conscience were in every instance where they come in conflict with the law of the land the paramount rule of action. * * *

"For example, not to go outside of Pennsylvania, a Jew who refused to be sworn in the trial of a case on Saturday because it was his Sabbath was fined, *Stanbury v. Marks*, 2 Dall. 213 (I L. Ed. 353). The conscientious scruples of a Jew to appear in court and attend to the trial of his case on the same day were held to be no ground for the continuance of his cause. *Philips v. Gratz*, 2 Pen. & W. 412 (23 Am. Dec. 33). The act prohibiting all worldly employment upon the first day of the week has been held not to be in contravention of the constitutional rights under consideration, even where applied to persons whose religious belief leads them to observe another day of the week as their Sabbath. *Commonwealth v. Wolf*, 3 Serg. & R. 48; *Specht v. Commonwealth*, 8 Pa. 312 (49 Am. Dec. 518). The same was held to be true as to persons who conscientiously believe it to be their religious duty to labor the first six days of the week and to keep the seventh day as the Sabbath. *Waldo v. Commonwealth*, 9 Weekly Notes Cas. 200. Adherents of a religious organization who deem it their duty by divine command to go into the streets and there preach the gospel and who as a regular part of their service use the drum are not exempted by the constitution from the operation of a city ordinance which prohibits the use of a drum or other musical instrument on the street without permit from the mayor. *Wilkes-Barre v. Garabed*, 11 Pa. Super. Ct. 355. The case of *Commonwealth v. Lesher*, 17 Serg.

& R. 155, is not directly pertinent to the question before us, but the remarks of Chief Justice Gibson which though made in a dissenting opinion were approved in *Specht v. Commonwealth*, 8 Pa. 312, and have not been questioned or qualified in any later case that has come to our notice, seem to be very pertinent. He said: 'It is declared in the constitution that no human authority can, in any case, control or interfere with the rights of conscience. But what are those rights? Simply a right to worship the Supreme Being according to the dictates of the heart, to adopt any creed or hold any opinion whatever on the subject of religion, and to do or forbear to do, any act, for conscience sake, the doing or forbearing of which is not prejudicial to the common weal.' Then after speaking of the views of Mr. Jefferson upon the subject, he proceeded: 'He denies the right of society to interfere only where society is not a party in interest, the question, with its consequences, being between the man and his Creator; but, as far as the interests of society are involved, its right to interfere on principles of self-preservation is not disputed. And this right is insolvable into the most absolute necessity; for, were the laws dispensed with, wherever they happened to be in collision with some supposed religious obligation, government would be perpetually falling short of the exigence. There are few things, however simple, that stand indifferent in the view of all the sects into which the Christian world is divided.' The right of the individual to clothe himself in whatever garb his taste, his inclination, the tenets of his sect, or even his religious sentiments may dictate is no more absolute than his right to give utterance to his sentiments, religious or otherwise."

To the same effect:

O'Connor v. Hendricks, 184 N. Y. 421, 77 N. E. 712, 7 L. R. A. (N. S.) 402.

MEDICAL ATTENDANCE

It is also held that the religious belief of the parent is no defense in a prosecution for a failure to provide a child with the medical attendance required by a statute or an ordinance.

Owens v. State, 6 Okla. Cr. 110, 36 L. R. A. (N. S.) 633, 634-636.
People v. Pierson, 176 N. Y. 201, 63 L. R. A. 187, 192, 68 N. E. 243.

SUNDAY LAWS

The Jew and the Seventh-Day Adventist have contended that because of their religious beliefs they are without the operation of the Sunday laws, but the courts have refused to recognize this defense.

Scales v. State, 47 Ark. 476, 58 Am. Rep. 768, 1 S. W. 769, 771.
Commonwealth v. Has, 122 Mass. 40, 42.
Philips v. Gratz, 2 Pen. & W. 412, 23 Am. Dec. 33.

SALVATION ARMY

One of the very best cases to be found in the books declaring the law on this subject is *Wilkes-Barre v. Garabed*, 11 Pa. Super. 355. The defendant was an officer in the Salvation Army who was fined for violating an ordinance forbidding the beating of a drum on the streets of a city. He contended that his act was an act of worship and that the ordinance in question as applied to an officer of the Salvation Army engaged in conducting its characteristic service on the streets was a violation of the freedom of worship guaranteed by the constitution of Pennsylvania. The case was thoroughly briefed and the opinion of Judge Orlady, beginning on page 365 of the report, exhaustively discusses the law.

HEALING BY PRAYER

Another excellent case is that of *Smith v. People*, 51 Colo. 270, 36 L. R. A. (N. S.) 158, 161. In the above decision the court holds that a belief by a party that he has a gift of healing by prayer and an undertaking on his part so to heal for compensation paid him brings him within the operation of the statutes regulating the practice of medicine, and his failure to comply with the provisions of these statutes cannot be excused by his belief that it is his religious duty to exercise his alleged gift.

The principle abundantly settled by the above and other authorities is that the state is not to be stayed in the enactment of legislation looking to the general welfare by the fact that the enforcement of statutes enacted for this purpose will run counter to the religious beliefs of some of those who come within the purview of the statutes.

Even if it could be held that the foregoing statute interfered with the performance of what some parents regard as a religious duty, the statute would still be valid.

Point No. V

The question of the right of individuals or public officers to insist that religious instruction be given as part of the course in the common schools has been presented to the courts on many occasions. The principle that sectarian religious instruction may not be given in the public schools is so well established that it will not be discussed in this brief further than to call attention to some cases, most of which are recent, and to set forth to some extent the grounds upon which judicial decisions have been based.

In *Donahoe v. Richards*, 38 Me. 379, 61 Am. Dec. 256, a school committee had regularly prescribed the Protestant version of the English Bible to be used as a reading book in the public schools; the plaintiff, a pupil in one of the schools, refused to read in this book and was expelled for that reason.

The following excerpts from the opinion of the court in that case are submitted as being in point in the instant case (page 263 of Report, 61 Am. Dec.):

"The common schools are not for the purpose of instruction in the theological doctrines of any religion or of any sect. The state regards no one sect as superior to any other, and no theological views as peculiarly entitled to precedence. It is no part of the duty of the instructor to give theological instruction; and if the peculiar tenet of any particular sect were so taught, it would furnish a well-grounded cause of complaint on the part of those who entertained different or opposing religious sentiments.

"But the instruction here given is not in fact, and is not alleged to have been, in articles of faith. No theological doctrines were taught. The creed of no sect was affirmed or denied; the truth or falsehood of the book in which the scholars were required to read were not asserted. No interference, by way of instruction, with the views of the scholars, whether derived from parental or sacerdotal authority, is shown.

"The Bible was used merely as a book in which instruction in reading was given. But reading the Bible is no more an interference with religious belief than would reading the mythology of Greece or Rome be regarded as interfering with religious belief or in affirmance of the pagan creeds. A chapter in the koran might be read, yet it would not be an affirmation of the truth of Mohammedanism, or an interference with religious faith. The Bible was used merely as a reading-book, and for the information contained in it, as the koran might be, and not for religious instruction; if

suitable for that, it was suitable for the purpose for which it was selected. No one was required to believe or punished for disbelief, either in its inspiration or want of inspiration, in the fidelity of the translation or its inaccuracy, or in any set of doctrines deducible or not deducible therefrom."

The above excerpt very clearly illustrates the limitations of the right to impart religious instruction in the common schools.

The following excerpt, beginning at page 269 of the same Report, is submitted as applying directly to the question involved in the instant case:

"But the objection is urged that this is the creation of a religious test. But no requirements as to belief are made essential to entitle a scholar to the benefits of the common schools of the state. He may be a Jew or Mohammedan, a Catholic or Protestant; he may believe much or little, according to the instructions received at home—and for no such cause is he to be deprived of instruction. The state opposes no test or other impediment for the purpose of debarring any one from the public schools. But the claim of the plaintiff is much more liable to the exception that it is creating the subordination or preference of one sect or denomination over another. Her claim to be exempted from a general regulation of the school rests entirely on her religious belief, and is to the extent that the choice of reading-books shall be in entire subordination to her faith, and because it is her faith. The preference is manifestly given, if, in the selection to be made, the defendants were bound to defer to the doctrines and authority and teachings of the sect of which she is a member. The right of negation is, in its operation, equivalent to that of proposing and establishing. The right of one sect to interdict or expurgate would place all schools in subordination to the sect interdicting or expurgating."

What would be the effect of the granting of appellee's claims in the instant case is illustrated by the following excerpt, beginning at page 271 of the said report:

> "The right as claimed undermines the power of the state. It is that the will of the majority shall bow to the conscience of the minority, or of one. If the several consciences of the scholars are permitted to contravene, obstruct, or annul the action of the state, then power ceases to reside in majorities and is transferred to minorities. Nor is this all: while the laws are made and established by those of full age, the right of obstruction, of interdiction, is given to any and all children, of however so immature an age or judgment."

The duty of the state under such circumstances is stated in the following excerpt, beginning at page 272 of the said report.

> "The legislature establishes general rules for the guidance of its citizens. It does not necessarily follow that they are unconstitutional, nor that a citizen is to be legally absolved from obedience because they may conflict with his conscientious views of religious duty or right. To allow this would be to subordinate the state to the individual conscience. A law is not unconstitutional because it may prohibit what a citizen may conscientiously think right, or require what he may conscientiously think wrong. The state is governed by its own views of duty. The right or wrong of the state is the right or wrong as declared by legislative acts constitutionally passed. It may pass laws against polygamy, yet the Mormon or Mohammedan can not claim an exemption from their operation, or freedom from punishment imposed upon their violation, because they may believe, however conscientiously, that it is an institution founded on the soundest political wisdom, and resting on the sure foundation of inspired revelation. It may establish a day of rest as a civil institution, though the effect of it may be to deprive the Jew of one-sixth of his time for purposes of labor or of business."

Knowlton v. Baumhover, 182 Iowa, 691, 166 N. W. 202, 5 A. L. R. 841, is a recent case which directly involved the question of the right to impart religious instruction in the public schools, the suit having been brought primarily to enjoin the use of public money for the support of a parochial school. In the course of the opinion in that case the court, by Mr. Justice Weaver, said (page 848 of Report in 5 A. L. R.):

> " * * * If there is any one thing which is well settled in the policies and purposes of the American people as a whole, it is the fixed and unalterable determination that there shall be an absolute and unequivocal separation of church and state, and that our public school system, supported by the taxation of the property of all alike—Catholic, Protestant, Jew, Gentile, believer, and infidel—shall not be used directly or indirectly for religious instruction, and above all that it shall not be made an instrumentality of proselyting influence in favor of any religious organization, sect, creed, or belief. So well is this understood, it would be a waste of time for us at this point to stop for specific reference to authorities or precedents, or to the familiar pages of American history bearing thereon.
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> " * * * The right of a man to worship God, or even to refuse to worship God, and to entertain such religious views as appeal to his individual conscience, without dictation or interference by any person or power, civil or ecclesiastical, is as fundamental in a free government like ours as is the right to life, liberty, or the pursuit of happiness. Included in that sacred right is that of the parent to instruct and guide his own children in religious training. He has no right, however, to ask that the state, through its school system, shall employ its power or authority or expend money acquired by public taxation in training his children religiously. The same principles which assure to him the right of perfect freedom of conscience in matters

of church affiliation and religious belief forbid the employment of public authority of any kind to impose his views upon his neighbor or his neighbor's children. For like reasons, while within matters of religion, it is no less important that those who are employed in public stations, and especially in public schools, do not make use of the advantages of their position to teach or promote their peculiar religious notions. To guard against this abuse, most of our states have enacted constitutional and statutory provisions, forbidding religious exercises and religious teaching in all public schools, and all use or appropriation of public funds in support of sectarian institutions.

* * * * *

" * * * To constitute a sectarian school or sectarian instruction which may not lawfully be maintained at public expense, it is not necessary to show that the school is wholly devoted to religious or sectarian teaching. In *State ex rel. Weiss v. School Bd.*, 76 Wis. 177, 7 L. R. A. 330, 20 Am. St. Rep. 41, 44 N. W. 967, the court reached a decision somewhat at variance with our decision in *Moore v. Monroe*, 64 Iowa 367, 52 Am. Rep. 444, 20 N. W. 475, on the subject of Bible reading in the public schools, but its general discussion of the subject of religious and sectarian teaching covers the whole field of controversy on these subjects in a very able and convincing manner. Among other things, it says: 'The mere fact that only a small fraction of the school hours is devoted to such worship in no way justifies such use against an objecting taxpayer. If the right be conceded, then the length of time so devoted becomes a matter of discretion. If such right does not exist, then any length of time, however short, is forbidden. The relators as taxpayers of the district were compelled to aid in the erection of the school building in question and also to aid in the support of the school maintained therein. * * * Being thus compelled, * * * they have a legal right to object to its being used as 'a place of worship.' "

This case will be found valuable as containing excerpts from a number of other leading cases upon the question of sectarian religious instruction in public schools, among which are: *State ex rel. Freeman v. Schreve,* 65 Neb. 853, 59 L. R. A. 927, 91 N. W. 846, 93 N. W. 169; *Board of Education v. Minor,* 23 Oh. St. 211, 13 Am. Rep. 233; *Stevenson v. Hanyon,* 4 Pa. Dist. R. 395; *People ex rel. Roman Catholic Orphan Asylum Soc. v. Board of Education,* 13 Barb. 408; St. Patricks *Orphan Asylum v. Board of Education,* 34 How. Pr. 229; *People ex rel. Ring v. Board of Education,* 245 Ill. 334, 29 L. R. A. (N. S.) 442, 92 N. E. 251, 19 Ann. Cas. 220; *Hysong v. Gallitzin School Dist.,* 164 Pa. 629, 26 L. R. A. 203, 44 Am. St. Rep. 632, 30 Atl. 482; *O'Connor v. Hendrick,* 184 N. Y. 421, 7 L. R. A. (N. S.) 402, 77 N. E. 612, 6 Ann. Cas. 432, and numerous other cases therein discussed.

Wilkerson v. Rome, 152 Ga. 762, 110 S. E. 895, 20 A. L. R. 1834, is a more recent case which involves the validity of an ordinance enacted by the city commission of Rome requiring some portion of the King James Version of the Bible, of either the Old or the New Testament, to be read, and prayer offered to God in the hearing of the pupils, daily during the regular sessions of the school, and also contains a review of the leading cases upon the subject.

Evans v. Selma Union High School District, (Cal. 1924) 222 Pac. 801, 31 A. L. R. 1121, is the most recent case on the subject to which our attention has been called. Following the report of this case in 31 A. L. R. will be found an annotation by the editors under the title "Sectarianism in Schools" in which the recent case of *Smith v. Donahue,* (1922) 202 App. Div. 656, 195 N. Y. Supp. 715, involving the question of the right of

public school officers to provide text books and other school supplies, furnished by the state, to parochial or other private schools was denied, and that of *State ex rel. Van Straten v. Milquet,* (1923) 180 Wis. 109, 192 N. W. 392, in which the right of school officers to use public school funds in paying a contractor to transport pupils to and from parochial schools was denied.

It may be urged that the cases cited under this point were denied upon specific constitutional and statutory grounds. However that may be, they represent the great weight of authority and predominating public opinion upon the question of sectarian religious instruction in connection with instruction in the common schools. It appears from the bill of complaint in the instant case that appellee's contention is based almost exclusively upon its claim of right to impart such instruction in connection with the common school work which it conducts.

Point No. VI

It is alleged in subdivision 4 of paragraph 15 of appellee's amended bill of complaint that the provision of subdivision "d" of section 5259, Oregon Laws, as amended, delegating to county school superintendents power and authority to determine when any child between the ages of eight and 16 years shall attend the public grade schools and when such child shall be exempt from the provisions of said law is in violation of those clauses of section 1 of article XIV of the amendments to the Constitution of the United States which provide that no state shall deprive any person of liberty without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

If a state has the right to compel children to attend public schools, it has the right to prescribe conditions under which exemption from such provisions may be extended, and the only restriction upon that right provided by the constitution is that there shall be no unjust discrimination, but that the law shall operate uniformly upon all persons within a class.

It is apparent that the subdivision of the act referred to is not subject to the objection that it applies only to a class, since it applies equally to all children of school age. Consequently, it appears that the objection of the defendants must be based on that provision of the act which delegates to county school superintendents the power to determine to whom the exemption shall be extended.

The act does not provide for or by its terms permit of any discrimination by county superintendents, but clearly contemplates that the provisions of the act shall be applied to all in an equal and uniform manner.

The objection appears to be that the provision referred to constitutes an attempt to delegate legislative power to a public officer.

It must be admitted that it is the exclusive function of the Legislative Department to enact laws, but it has at all times been recognized that there is a clear distinction between the enactment of laws and the power to determine under what conditions they shall become effective. It is so apparent that the Legislature could not prescribe the details of the operation of very many of the laws enacted by such bodies that the necessity for the delegation to some subordinate body of the power to determine the details regarding its operation does not require argument.

The objection raised in this instance has been considered by the courts on very many occasions, and the rule is now firmly established and uniformly recognized

that, while the Legislature may not delegate power to enact a law, it can delegate the power to determine the conditions under which it is to take effect in a given instance. Any person having knowledge of the details of the administration of public laws knows that it has always been customary to delegate to subordinate bodies authority such as has been conferred upon county school superintendents in this instance. The question has been before the United States Supreme Court and other federal courts with reference to such powers that have been delegated to executive and administrative officers of the government, including the president of the United States, and, in the state of Oregon, we have very many laws delegating to subordinate boards, commissions and individuals the power to determine when laws shall be given effect in given instances. The Superintendent of Banks has power to declare a bank insolvent and to take charge of and administer its affairs. In so doing, he is guided by the facts and circumstances and his own judgment as to whether or not such action is required on his part. The same thing is true as to the powers of bank examiners under the national banking laws. Powers similar to those delegated to county superintendents in this instance are conferred upon the Secretary of State, the Insurance Commissioner, the Corporation Commissioner, the State Engineer, the Public Service Commission and numerous other commissions, boards and individuals in this state, and the power has been so universally recognized as not to be subject to question at this time. The power extended to the county superintendent is not arbitrary but is to be exercised in a cautious and reasonable manner. He is authorized to act only when, upon examination of the child being taught by parent or private teacher, he shall determine that such child is

not being properly taught. What constitutes proper instruction is not a question to be arbitrarily decided by the superintendent but is one in which he is to exercise a reasonable discretion. Should he overstep the bounds of his authority or act in an unreasonable manner, his action may be restrained or set aside by the court. On the other hand, it was intended that he should be given broad powers since he, in the contemplation of the Legislature, is, by reason of his position and knowledge of such matters, most eminently qualified to determine whether or not a given child is receiving proper instruction.

There is a legal presumption that official duty has been properly performed and likewise a presumption that official duty will be properly performed. Until there is ground for complaint that there has been an arbitrary disregard of such duties, the appellee is not in a position to appeal to the court for relief from the effect of the provisions of the said subdivision 4.

The argument directed against the validity of the statute on this ground will doubtless be based on the fact that the statute fails to define the rules which are to govern the county school superintendent in granting or withholding the permission above referred to.

It is extremely difficult to draft a statute which will make proper provision for all of the situations which may arise in practice. Any specification of the cases which would entitle the school superintendent to grant the permission referred to in the subdivision would be apt to prove incomplete in practice. There is no presumption that the discretion vested in the school superintendent will be harshly or arbitrarily exercised. The presumption is, on the contrary, that all citizens will be treated alike, and the permission granted by the school

superintendent will be confined to cases calling for special treatment. The compulsory education statutes of Arizona, Colorado, Delaware, Georgia, Idaho, Pennsylvania, Virginia, Washington and West Virginia all vest a dispensing power with some official and provide no basis or rule to govern the official in exercising the power granted.

Session Laws of Arizona for 1921, chapter 143, section 1 (a), subdivision 5.
Mills' Annotated Statutes of Colorado, 1912, section 639.
Session Laws of Delaware for 1921, article V, chapter 160, section 41.
Park's Annotated Code of Georgia, 1914, Supplement of 1922, section 1444 (a).
Compiled Statutes of Idaho, 1919, section 1018.
Purdon's Digest of the Laws of Pennsylvania, 13th Ed., Supplement A-Y, 1916-1921, section 154.
Session Laws of Virginia, 1922, chapter 381, section 11.
Remington's Washington Code, 1922, section 5072.
Barnes' Code of West Virginia, 1923, chapter 45, section 122, subdivision 1.

The statutes of New Hampshire and Wyoming are on the border-line. The New Hampshire statute authorizes the exercise of the dispensing power when "the moral or physical welfare of such child" shall call for it. See Laws of New Hampshire, 1919, chapter 84, section 1. The Wyoming statute provides that the dispensing power shall be exercised in the case of "pupils to whom the provisions of this act might work a hardship"; Session Laws, 1923, chapter 43, section 1, amending section

2260 of the Wyoming Compiled Statutes. The foregoing provisions are so general in their character that they can scarcely be said to be a guide to the officer exercising the dispensing power and we think that it may with propriety be said that there are eleven states whose statutes contain in substance the provision which it is alleged makes this statute unconstitutional.

The question undertaken to be raised has frequently been before the courts for their determination and the rule announced both by the supreme court of the United States and by the supreme court of Oregon is contrary to the contention advanced.

Fischer v. St. Louis, 194 U. S. 361, 48 L. Ed. 1018, 1023.

This case involved the validity of an ordinance forbidding the location of stables in a certain district without permission from the council. The ordinance contained no rules to guide the council in granting or withholding such permission. On page 371 of the official report and page 1023 of Lawyers' Edition it is said by Mr. Justice Brown:

> "We have no criticism to make of the principle of granting a license to one and denying it to another, and are bound to assume that the discrimination is made in the interest of the public."

On page 1024 of Lawyers' Edition the learned justice says:

> "The only alternative to the allowance of such exceptions would be to make the application of the ordinance universal. It would be exceedingly difficult to make exceptions in the ordinance itself without doing injustice in individual cases."

The same rule has been announced by the supreme court of Oregon.

State v. Briggs, 45 Or. 366, 375-376.

This case involved the validity of the legislation providing for a board of barber examiners. The statute authorized this board to license those who were to engage in the occupation of barber in the state of Oregon. The court held that the presumption is that the board would not act arbitrarily. The possibility that they might do so does not make the statute unconstitutional. It was expressly held in this case that the legislature was under no necessity to prescribe the qualifications of a barber. The same rule has been announced by a number of other courts.

Ex parte Fiske, 72 Cal., 125, 13 Pac. 310.

This case involved the validity of an ordinance of the city of San Francisco. It fixed the fire limits and forbade the erection and repair of wooden buildings therein, with a proviso that the fire wardens might permit such repair and that in such case the ordinance should be inoperative. In response to the same objection with which we are now confronted the supreme court of California said, on page 311 of the Pacific Reporter:

> "And it is equally clear that no general rule could be established beforehand that would meet the emergencies of individual cases. Therefore the power to give relief in particular instances is conferred on certain officers; and it is not to be presumed that they will exercise it wantonly, or for purposes of profit or oppression. *Neither is the granting of permission in particular instances to be considered as the taking away of any rights from those to whom such permissions are not*

given. The latter would be in no better position if such permissions were given to none, or if there was no power to give them at all."

Ex parte Spencer, 149 Cal. 396, 86 Pac. 896, 898.

This case involved the validity of a child labor law. It contained a provision that during vacation children over twelve could work in the prohibited occupations, provided the principal of the school gave them a permit. It is inferrable that the statute does not define the rules which should govern principals in granting or withholding permits. The court said:

> "There is no discrimination. The legislature has the power to make such reasonable regulations as these with respect to the time of the vacations of schools."

The same rule is announced in *Ex parte Weber*, 149 Cal. 392, 86 Pac. 809.

City of Eureka v. Wilson, 15 Utah 53, 48 Pac. 41, 44.

This case involved the validity of an ordinance with reference to the moving of houses through the streets. A discretion was committed to an officer of the municipality to grant permission so to do. The order contained no rules to guide the officer in the exercise of this discretion. The court upheld the ordinance and said:

> "It is true, there is a discretion vested in an officer, but such discretion does not mean an absolute or arbitrary power. It is a legal discretion, which must be exercised in a reasonable manner. Where the law leaves the exercise of a power to the discretion of an officer, it does not mean that he shall exercise such discretion wantonly or arbitrarily, to the injury of any subject."

Lee v. Hoffman, 182 Iowa 1216, 166 N. W. 565.

This case concerned an anti-fraternity law. Notwithstanding the statute, school boards were entitled to permit the existence of some societies or associations and the rules which were to guide them in granting this permission were not contained in the statute. The Iowa court nevertheless held that the statute was constitutional.

State v. Yopp, 97 N. C. 477, 2 S. E. 458.

This case involved the validity of a statute forbidding bicycles on certain state highways without the consent of the road superintendent. The court said:

> "It is further objected that the statute leaves it to the arbitrary discretion of the superintendent of the road named to allow or disallow persons to use a bicycle or tricycle, or other nonhorse vehicle' on it. This is a misapprehension of the true import of the provision cited. The discretion vested in the superintendent is not arbitrary. He is made the agent of the law, as well as superintendent, and he is bound to exercise the discretion vested in him, honestly, fairly, reasonably, and without prejudice or partiality, for the just purpose of effectuating the intention of the statute. If there be times or seasons or occasions when persons wish to use bicycles or other like vehicles, embraced by the prohibitory clause of the statute in question, it is his plain duty to allow them to do so at such times. The authority is not his. He is simply made the agent of the law for a lawful purpose, and he is amenable, as such, for any prostitution of the power so vested in him. And the creation of the discretion implies that there may be occasions or times or seasons when bicycles may be used on the road. It not infrequently happens that statutes require particular things to be done, or not to be done, that must be made to depend upon the judgment and discretion, of a designated agent or commissioner or

officer, and the discretion in such cases is not arbitrary; it is lawful, and must be lawfully exercised. The learned counsel for the appellant directed our attention to the case of *Yick Wo v. Hopkins*, 118 U. S. 356, 6 Sup. Ct. Rep. 1064. That case, in our judgment, has no application here. The court declared a city ordinance void upon the ground that its manifest purpose was not a just and reasonable regulation, but unlawful, and the discretionary powers conferred upon certain authorities of the city were purely arbitrary, intentionally so, and therefore unlawful and void."

State v. *Wolf*, 145 N. C. 440, 59 S. E. 40.

This case involved the constitutionality of a compulsory education statute applicable to Indians in a certain county. It contained the following proviso:

> "Provided further, that nothing in this act shall prevent the proper school authorities from excusing any child from the provisions of this act, when in their judgment they deem it necessary."

The court held that the proviso was a proper exercise of the legislative power and that the statute was valid.

There is nothing out of harmony with the foregoing decisions in *White* v. *Holman*, 44 Or. 180, 192. What the supreme court of Oregon condemned in the above case was not a statute for the licensing of sailor boarding houses, but the manner of its administration. The evidence showed that the board to whom the discretion had been committed under the statute was acting arbitrarily and its conduct was condemned as creating a monopoly, contrary to section 20 of article I of the Oregon Constitution.

Point No. VII

SUBDIVISION NOT ESSENTIAL TO STATUTE

If it were held, contrary to the decisions above cited, that subdivision (d) of section 5259 of the code as amended is unconstitutional, it would not by any means follow that the statute itself should be declared invalid. The rule in such cases is thus stated in *Cooley's Constitutional Limitations* (7th Ed.), pages 246-247:

> "It will sometimes be found that an act of the legislature is opposed in some of its provisions to the constitution, while others, standing by themselves, would be unobjectionable. * * * It would be inconsistent with all just principles of constitutional law to adjudge these enactments void because they are associated in the same act, but not connected with or dependent on others which are unconstitutional. * * * If, when the unconstitutional portion is stricken out, that which remains is complete in itself, and capable of being executed in accordance with the apparent legislative intent, wholly independent of that which was rejected, it must be sustained."

The rule in this jurisdiction is settled by the case of *Gantenbein v. West*, 74 Or. 334. This case involved the validity of an act providing for the transfer of probate jurisdiction in Multnomah county to the circuit court. The statute also provided for an additional circuit judge. Mr. Justice McBride held the former provision unconstitutional but upheld the remainder of the statute as valid. We quote from pages 340 to 341 of the Oregon report:

> "As before remarked, that portion of the act providing for an additional judge in Multnomah county, namely, the first two sections, is easily separable from

those sections heretofore held unconstitutional. All matters relating to the transfer of the probate jurisdiction of the county court into the circuit court, and the transformation of the county judge into a circuit judge with many and variegated powers, could be stricken both from the title and from the act itself, and yet leave a complete act providing for an additional judge.

"It is going far into the realm of speculation to say that the additional judgeship would not have been created had the sections providing for such transfer been omitted. On the face of the act they are not so interdependent that we can presume that such a result would have followed the omission of the last four sections. Such a conclusion would be to presume against the constitutionality of an act instead of in its favor; and it is a canon of statutory construction that if a statute can be given any reasonable interpretation consistent with its validity, such interpretation should be adopted."

Kiernan v. Portland, 57 Or. 454, 463.

This case involved the validity of an amendment to the city charter providing for the erection of a public bridge. So much of the act as attempted to impose on Multnomah county the care and maintenance of the bridge was held to be unconstitutional, but the remainder of the statute was upheld. The court said:

"It does not follow, however, that the whole amendment is void merely because one clause, easily separable from the rest, is ineffective."

Peterson v. Lewis, 78 Or. 641.

Chapter 337 of the Laws of 1915, found on page 537 of the session laws for that year, abolished the office of highway engineer and transferred his duties to the state engineer. Section 3 of the statute was held to be uncon-

stitutional as not embraced in the title of the act. The court said:

> "We understand it to be a governing rule of construction to give a statute such a meaning, if possible, as will render it valid and effectuate the will of the lawmakers as expressed. * * * It is a rule of statutory construction that, where the first section of a statute conforms to the obvious policy and intent of the legislature, it is not rendered inoperative by unconstitutional provisions in a later section which do not conform to this policy and intent. In such case the later provision is nugatory and will be disregarded."

Southern Pacific Co. v. Campbell, 189 Fed. 696.

This case involved the validity of a statute passed in 1907 by the legislature of Oregon creating a railroad commission and regulating carriers. Section 27 was held invalid because applying to interstate as well as domestic commerce. On page 700 Judge Wolverton said:

> "I am not to be understood as holding the entire act to be void and inoperative, very far from it, as the remainder of the act may stand as valid and operative without the provisions of section 27."

Hirschfield v. McCullagh, 64 Or. 502.

This case held unconstitutional so much of section 6707, L. O. L., as required the payment by a foreign corporation of a license fee based upon its capital stock. The court said, on page 517:

> "But it does not follow that because this part of the section is void that the whole section is void. Its provisions are not so interdependent that other requirements can not be separated from the single invalid provision."

Ex parte Case, 70 Or. 291.

In this decision the court held unconstitutional sections 4961 to 4967, L. O. L., in so far as they applied to peddlers engaged in interstate commerce. On page 305 of the report the court said:

> "It was contended at the argument that, inasmuch as the statute was confessedly inapplicable to persons engaged in purely interstate commerce, it was wholly void. This argument is predicated upon the idea that the legislative assembly would not have enacted the statute in question if it could have foreseen that it would be applicable only to persons and property within the state. Many authorities are cited which are supposed to sustain this doctrine; but in the great majority of them at least the law in question contains numerous provisions so dependent upon one another that the valid ones can not be separated from those determined unconstitutional, without destroying the system of taxation or regulation sought to be established. In the statute under consideration, however, there are no interdependent provisions. The law is single and direct in its purpose. With its effect, except as controlled by constitutional limitations, we have nothing to do. We can not presume that a coordinate branch of the government was ignorant of the provisions of the national constitution and the paramount authority of the general government over interstate commerce."

Simon v. Northrup, 27 Or. 487, 503-506.

This case involved the validity of a statute passed in 1895 and found on page 421 of the session laws of that year providing for the acquistion by the city of Portland of the Morrison street bridge, the Stark street ferry and the upper deck of the steel bridge. The conclusion reached by the court is thus stated on page 506 of the report:

> "Having examined all the objections urged, we conclude that the act under consideration is constitutional and valid, except in so far as it requires the county of

Multnomah to levy a tax and pay the interest and principal on the bridge bonds of the city of Portland and to maintain a ferry at Sellwood."

The same principle is announced in *State v. Smith*, 56 Or. 21. The rule so often announced in Oregon also has the support of courts of high standing elsewhere.

Fisher v. McGirr, 1 Gray 1.

This case involved the validity of a statute prohibiting the sale of liquors. It provided for two methods of enforcement of the statute, one *in rem* and the other *in personam*. The statute was held unconstitutional in part by Chief Justice Shaw. He said, on pages 21 to 22 of the report:

"We suppose the principle is now well understood, that where a statute has been passed by the legislature, under all the forms and sanctions requisite to the making of laws, some part of which is not within the competency of legislative power, or is repugnant to any provision of the constitution, such part thereof shall be adjudged void and of no avail, whilst all other parts of the act, not obnoxious to the same objection, will be held valid and have the force of law. There is nothing inconsistent, therefore, in declaring one part of the same statute valid and another part void."

Commonwealth v. Clapp, 5 Gray 97, 100.

Here the court said:

"It has been too often stated and explained, now to require authorities, that a statute may be unconstitutional in some particular provision and not in others. A statute is judicially held to be unconstitutional, because it is not within the scope of legislative authority; it may either propose to accomplish some object prohibited by the constitution, or to accomplish some lawful

and even laudable object by means repugnant to the Constitution of the United States or of the commonwealth. A statute may contain some such provisions, and yet the same act, having received the sanction of all branches of the legislature, and being in the form of law, may contain other useful and salutary provisions, not obnoxious to any just constitutional exception. It would be inconsistent with all just principles of constitutional law to adjudge these enactments void, because they are associated in the same act, but not connected with or dependent on others which are unconstitutional."

In re Groff, 21 Neb. 647, 33 N. W. 426.

This case involved the validity of a judicial apportionment act passed by the Nebraska legislature. On page 431 of the Northwestern Reporter the court said:

"We hold, therefore, that where a part of an act is not dependent upon that which is unconstitutional, and is complete in itself, and capable of being executed, it will be maintained. So far as this act affects the eleven districts spoken of, it fully complies with these conditions, and, as to such districts, must be sustained."

Donnersberger v. Prendergast, 128 Ill 229, 21 N. E. 1, 2.

In this case the Illinois court announced the rule in the following language:

"Therefore, although a portion of the statute under consideration is unconstitutional, it does not follow that the court is authorized to declare its other provisions void, if they are separable from the void provisions, and capable of enforcement independently of such provision, unless it shall appear that all of the provisions of the act are so dependent on each other, operating together for the same purpose, or are otherwise so connected together in meaning that it can not be presumed that the legislature will have passed the one without the other

provision. When the constitutional and unconstitutional provisions are distinct and separable, the valid provisions may stand as though the invalid provisions had not been introduced."

To the same effect *Rood v. Carger,* 49 Cal. 117.

Subdivision (d) of section 5259 is certainly not essential to the compulsory education statute and in view of the foregoing authorities there is no room for the contention that the electors would have refused to adopt the statute in question but for the inclusion of this subdivision. So to hold would be to presume against the constitutionality of the statute, whereas all presumptions are in its favor. The argument on this branch of the case is greatly strengthened by the fact that the subdivision is a part of the act of 1911 and the amendment complained of has not substantially changed it.

TITLE OF ACT

It is contended in the companion case that the statute is unconstitutional because its title does not conform to the requirements of section 20 of Article IV of the Constitution. The title of the statute is "an act to amend section 5259, Oregon Laws." If there is such compilation as Oregon Laws, the rule is well settled that such a title is sufficient.

State v. Phenline, 16 Or. 107, 109;
Ex parte Howe, 26 Or. 181, 184;
Murphy v. Salem, 49 Or. 54, 58.

In 1919 the legislature provided for the codification of the laws. See chapter 266 of the Laws of 1919. Section 4 of this statute, found on page 440 of the Session Laws for 1919, contains the following sentence:

> "Said compilation shall be known by such name as may be agreed upon by the supreme court acting jointly with the code commissioner hereinabove provided for."

On the 4th of June, 1919, the supreme court of Oregon passed the following order, which is duly found in the journal:

> "In the matter of a code commissioner:
>
> "Now at this time it is ordered by the court that Conrad P. Olson be and he is hereby appointed code commissioner as authorized by chapter 266, Laws of 1919. The compensation of said commissioner to be fixed hereafter.
>
> "It is further ordered that such codification shall be known as 'Oregon Laws'."

The consent of the code commissioner to the order so passed is proved by the fact that the code, when issued, bore the title "Oregon Laws." This case therefore clearly comes within the rule announced in the three decisions of the Oregon court last above cited. It is, of course, clear that the question is one of Oregon law and that the decisions of the supreme court of Oregon thereon are binding.

The real objection raised by appellee is disposed of by the condition in section 20 of article IV, Constitution of Oregon, which reads as follows:

> "But if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be expressed in the title."

For convenience in considering the effect of the amendment we submit the old statute and the new in parallel columns:

OLD LAW	NEW LAW
Sec. 5259. *Children Between the Ages of Nine and Fifteen Years*—Every parent, guardian or other person in the state of Oregon having control or charge of any child, or children between and including the ages of nine and fifteen years of age, shall be required to send such child or children to the public schools for a term or period of not less or more than the number of months of public school held annually in the district in which such parents, guardian or other person in parental relation may reside; provided, that in the following cases, children shall not be required to attend public schools:	Sec. 5259. *Children Between the Ages of Eight and Sixteen Years*—Any parent guardian, or other person in the state of Oregon, having control or charge or custody of a child under the age of sixteen years and of the age of eight years or over at the commencement of a term of public school of the district in which said child resides, who shall fail or neglect or refuse to send such child to a public school for the period of time a public school shall be held during the current year in said district, shall be guilty of a misdemeanor and each day's failure to send such child to a public school shall constitute a separate offense; provided, that in the following cases children shall not be required to attend public schools:
(a) *Children Being Taught in Private School*—Any child, or children, who is or are, being taught for a like period of time in a private	(a) *Children Physically Unable*—Any child who is abnormal, subnormal or physically unable to attend school.

or parochial school such branches as are usually taught in the first eight years in the public schools, or has, or have, already acquired the ordinary branches of learning taught in such schools the fact of which acquisition of such ordinary branches of learning by such child, or children, shall be determined by the school board in charge of the public school in such district;

(b) *Children Physically Unable*—Any child, or children, who is, or are physically unable to attend school. In such cases the truant officer shall require a written statement of a competent physician certifying that such child, or children, is, or are physically unable to attend school;

(c) *Distance from School*—Children between the ages of nine and ten years of age whose parents live more than one and one-half miles, and children over ten years of age whose parents live more than three miles, by the nearest traveled road, from some public school; provided, that if transportation is furnished pupils in said district this exemption shall not apply.

(b) *Children Who Have Completed the Eighth Grade*—Any child who has completed the eighth grade, in accordance with the provisions of the state course of study.

(c) *Distance from School*—Children between the ages of eight and ten years, inclusive, whose place of residence is more than one and one-half miles, and children over ten years of age whose place of residence is more than three miles, by the nearest traveled road, from a public school; provided, however, that if transportation to and from school is furnished by the school district, this exemption shall not apply.

(d) *Private Instruction*—Any child, or children, who is, or are, being taught for a like period of time by the parent or private teacher such subjects as are usually taught in the first eight years in the public school, but before such child, or children, can be taught by a parent or private teacher, such parent or private teacher must receive written permission from the county superintendent, who is hereby authorized to grant such permission only in case of necessity, and such permission shall not extend longer than the end of the current school year. Such child, or children, must report to the county school superintendent or some person designated by him at least once every three months and take an examination in the work covered. If after such examination the county superintendent shall determine that such child, or children, is, or are, not being properly taught, then the county superintendent shall order the parent, guardian or other person in parental relation to send such child, or children, to school the remainder of the school year. Failure on the

(d) *Private Instruction*—Any child who is being taught for a like period of time by the parent or private teacher such subjects as are usually taught in the first eight years in the public school; but before such child can be taught by a parent or a private teacher, such parent or a private teacher must receive written permission from the county superintendent, and such permission shall not extend longer than the end of the current school year. Such child must report to the county school superintendent or some person designated by him at least once every three months and take an examination in the work covered. If, after such examination, the county superintendent shall determine that such child is not being properly taught, then the county superintendent shall order the parent, guardian or other person, to send such child to the public school the remainder of the school year.

If any parent, guardian or other person having control or charge or custody of any child between the ages of eight and sixteen years, shall fail to comply with any provision of this section, he shall

part of the parent, guardian or other person in parental relation to comply with the order of the county superintendent shall render such person liable to the penalty provided for in this act.

Sec. 5260. *Penalty for Failure by Parent, etc., to Comply*—In case any parent or other person in parental relation shall fail to comply with the provisions of this act he shall be deemed guilty of a misdemeanor and shall, on conviction thereof, be liable to a fine of not less than $5, nor more than $25, or by imprisonment in the county or city jail not less than two nor more than ten days, or by both such fine and imprisonment in the discretion of the court.

be guilty of a misdemeanor, and shall, on conviction thereof, be subject to a fine of not less than $5, nor more than $100, or to imprisonment in the county jail not less than two nor more than thirty days, or by both such fine and imprisonment in the discretion of the court.

This act shall take effect and be and remain in force from and after the first day of September, 1926.

The title of the amendatory act is: "An act to amend section 5259, Oregon Laws."

The effect of such amendment is stated in Lewis' Sutherland Statutory Construction, 2d Ed., Vol. 1, p. 236, Sec. 139, to be as follows:

> "Where the title of the amendatory act specifies the section or sections to be amended, the weight of authority is that the amendments must be germane to the subject matter of the sections specified, and that amendments of other sections, not specified, will be void."

See also:

Newman v. State, 101 Ga. 534, 28 S. E. 1005;
State v. Am. Sugar Ref. Co., 106 La. 533, 31 S. 181;
Horkey v. Kendall, 53 Neb. 522, 73 N. W. 953, 68 Am. St. Rep. 623.

The result of the attempt to incorporate within section 5259, by amendment, provisions theretofore not contained in that section is that said provisions are void, but that the other provisions of said amended section are not thereby affected, and the provisions of section 5260 remain in full force and effect.

Conclusion

The first American colonies were founded and settled largely by refugees from Europe who sought in this new continent a home where one might be permitted to worship God according to the dictates of his own conscience, free from dictation on the part of any government. The early history of the colonies reveals much of intolerance in religious matters, but in the formation of our National Government the imperative necessity that church and state should ever be maintained as separate institutions, if we were to have an enduring government and this was to be in fact the land of the free, was early recognized. In the gradual evolution of political and religious matters in the nation, as well as in the state, the state and the church have ever been maintained as separate and distinct institutions.

The growth of the public school system has been gradual. During the early history of the country, owing to sparse population in many localities and the poverty of the settlers, public schools for all could not be maintained, and, as a matter of necessity, parents were left to provide for the education of their children as best they could. Consequently many children grew up without even the rudiments of an education. Some were educated, at least to some extent, by parents, and the education of others was provided for by private schools.

The necessity for any other kind of school than that provided by the state has ceased to exist. The public school is everywhere recognized as being an institution vital to the welfare of the individual citizen, and to that of the state and nation. The state, at great expense, has provided everything in the line of facilities for the education of youth in the public schools that experience has indicated to be to their best interests. To that end, insti-

tutions devoted exclusively to the instruction and training of teachers have been founded and are being maintained. Such institutions are conducted by specialists in matters pertaining to the education of the young, and, as a result, the methods of instruction and means of promoting the health and education of the children in the public schools have been greatly improved in recent years. Our public school buildings, as now constructed, represent the result of experience and great expense in providing for the physical and intellectual welfare of the children who are trained therein.

The welfare of minor children is a matter in which the state is interested to such an extent that it has asserted the right to take a babe from its mother's arms and deprive her of its custody, training and society, if it is apparent that the welfare of the child or of the public requires such action.

No attempt has been made on the part of appellee to show that the training received by children who attend its schools is superior to that which they would receive in the public schools, and no such condition or result could be shown. Comparison of private and parochial schools with those maintained by the state will not reveal a degree of superiority of the former which justifies a demand to be permitted to continue same as a right guaranteed by the Constitution.

The argument of appellee in the lower court has been very ably directed to a claim that parents and children have been deprived of natural liberty guaranteed by the federal constitution and to an appeal for protection from such alleged deprivation. The very able briefs filed on behalf of appellee in the lower court have failed to reveal any particular in which the alleged deprivation has operated to the disadvantage of either parents or children.

except that it has deprived them of an opportunity to impart sectarian religious instruction in connection with the education of children in the schools. Having in mind the fixed purpose of our government in matters relating to the separation of church and state, the continued and consistent efforts that have been maintained to continue them as separate institutions, and the result of the vital legal struggles which have arisen over the question of sectarian instruction in the public schools, we submit that the reason why the people of the state of Oregon, under their initiative powers, have enacted a law requiring that all children shall be educated exclusively in the public schools, when their physical condition so permits, or at home, is apparent, and that in making such provision they acted within well defined and well established powers of government. In its last analysis, the argument of appellee is that it demands, as a right guaranteed under the Constitution of the United States, the right to conduct an institution for the instruction of children of common school age in opposition to the public schools maintained by the state, in order that it may therein give sectarian religious instruction which is prohibited in the public schools.

If a few such institutions can lawfully be maintained on behalf of the different religious denominations, the number which may ultimately be so maintained cannot consistently be limited, and if this court should hold that the state does not have the right to require all children within its borders to be educated in its public schools, religious denominations may, without constitutional restrictions, develop a system of educational training which will result in doing away with public schools.

The great majority of American youth receive their religious instruction in purely sectarian institutions or in

the home, separate and apart from their common school education or training, and it has been settled that sectarian religious instruction in our public schools will not be tolerated. The right demanded by appellee is denied to all whose children attend the public schools.

Appellee places great reliance upon the recent case of *Meyer v. Nebraska* (262 U. S. 390 Sup. Ct. Rep. 390 to 403, 67 L. Ed. 1042), and its companion cases. We quote from the opinion of Mr. Justice McReynolds in that case as follows:

> "The problem for our determination is whether the statute, as construed and applied, unreasonably infringes the liberty guaranteed to the plaintiff in error by the fourteenth amendment. 'No state * * * shall deprive any person of life, liberty or property without due process of law.'
>
> "While this court has not attempted to define with exactness the liberty thus guaranteed, the term has received much consideration, and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint, but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and, generally, to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men. *Slaughter House Cases*, 16 Wall. 36, 21 L. Ed. 394; *Butchers' Union S. H. & L. S. L. Co. v. Crescent City L. S. L. & S. H. Co.* 111 U. S. 746, 28 L. ed. 585, 4 Sup. Ct. Rep. 652; *Yick Wo v. Hopkins*, 118 U. S. 356, 30 L. ed. 220, 6 Sup. Ct. Rep. 1064; *Minnesota v. Barber*, 136 U. S. 313, 34 L. ed. 455, 3 Inters. Com. Rep. 185, 10 Sup. Ct. Rep. 862; *Allgeyer v. Louisiana*, 165 U. S. 578, 41 L. ed. 832, 17 Sup. Ct. Rep. 427; *Lochner v. New York*, 198 U. S. 45, 49 L. ed. 937, 25 Sup. Ct. Rep. 539,

3 Ann. Cas. 1133; *Twining v. New Jersey*, 211 U. S. 78, 53 L. ed. 97, 29 Sup. Ct. Rep. 14; *Chicago, B. & Q. R. Co. v. McGuire*, 219 U. S. 549, 55 L. ed. 328, 31 Sup. Ct. Rep. 259; *Truax v. Raich*, 239 U. S. 33, L. ed. 131, L. R. A. 1916D, 545, 36 Sup. Ct. Rep. 7, Ann. Cas. 1917B, 283; *Adams v. Tanner*, 244 U. S. 590, 61 L. ed. 1336, L. R. A. 1917F, 1163, 37 Sup. Ct. Rep. 662, Ann. Cas. 1917D, 973; *New York L. Ins. Co. v. Dodge*, 246 U. S. 357, 62 L. ed. 772, 38 Sup. Ct. Rep. 337, Ann. Cas. 1918F, 593; *Truax v. Corrigan*, 257 U. S. 312, 66 L. ed. 254, 27 A. L. R. 375, 42 Sup. Ct. Rep. 124; *Adkins v. Children's Hospital* (April 9, 1923) 261 U. S. 525, ante, 785, 24 A. L. R. 1238, 43 Sup. Ct. Rep. 394; *Wyeth v. Board of Health* (Wyeth v. Thomas), 200 Mass. 474, 23 L. R. A. (N. S.) 147, 128 Am. St. Rep. 439, 86 N. E. 925. The established doctrine is that this liberty may not be interfered with, under the guise of protecting the public interest, by legislative action which is arbitrary or without reasonable relation to some purpose within the competency of the state to effect. Determination by the legislature of what constitutes proper exercise of police power is not final or conclusive, but is subject to supervision by the courts. *Lawton v. Steele*, 152 U. S. 133, 137, 38 L. ed. 385, 388, 14 Sup. Ct. Rep. 499.

"The American people have always regarded education and acquisition of knowledge as matters of supreme importance, which should be diligently promoted. The Ordinance of 1787 declares: 'Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.' Corresponding to the right of control, it is the natural duty of the parent to give his children education suitable to their station in life; and nearly all the states, including Nebraska, enforce this obligation by compulsory laws.

"Practically, education of the young is only possible in schools conducted by especially qualified persons who devote themselves thereto. The calling always has been

regarded as useful and honorable—essential, indeed, to the public welfare. Mere knowledge of the German language can not reasonably be regarded as harmful. Heretofore it has been commonly looked upon as helpful and desirable. Plaintiff in error taught this language in school as part of his occupation. His right thus to teach and the right of parents to engage him so to instruct their children, we think, are within the liberty of the amendment.

"The challenged statute forbids the teaching in school of any subject except in English; also the teaching of any other language until the pupil has attained and successfully passed the eighth grade, which is not usually accomplished before the age of twelve. The supreme court of the state has held that 'the so-called ancient or dead languages' are not 'within the spirit or the purpose of the act.' *Nebraska Dist. v. McKelvie*, 108 Neb. 448, 187 N. W. 927 (April 19, 1922). Latin, Greek, Hebrew are not proscribed; but German, French, Spanish, Italian, and every other alien speech are within the ban. Evidently the legislature has attempted materially to interfere with the calling of modern language teachers, with the opportunities of pupils to acquire knowledge, and with the power of parents to control the education of their own."

This appellant submits that, when given its broadest interpretation, the said decision does not apply to the situation presented by the instant case.

As we understand the case of *Meyer v. Nebraska, supra*, it involved the right of an individual to engage in the occupation of teaching and the right of parents and children to have their children receive instruction in German in a parochial school which was conducted pursuant to statute. We understand the effect of that decision to be that there did not appear to be any such immediate demand for the discontinuance of such instruction, to the deprivation of the right of the teacher

to engage in his profession and of the liberty of the parents and children to demand instruction in the German language, as to warrant such legislation. The gist of the opinion appears to us to be contained in the following excerpt therefrom (page 1046 of Report of 67 L. Ed.):

> "The power of the state to compel attendance at some school and to make reasonable regulations for all schools, including a requirement that they shall give instructions in English, is not questioned. Nor has challenge been made of the state's power to prescribe a curriculum for institutions which it supports. Those matters are not within the present controversy. Our concern is with the prohibition approved by the supreme court. *Adams v. Tanner*, 244 U. S. p. 594, 61 L. ed. 1342, L. R. A. 1917 F, 1163, 37 Sup. Ct. Rep. 662, Ann. Cas. 1917D, 973, pointed out that mere abuse incident to an occupation ordinarily useful is not enough to justify its abolition, although regulation may be entirely proper. No emergency has arisen which renders knowledge by a child of some language other than English so clearly harmful as to justify its inhibition, with the consequent infringement of rights long freely enjoyed. We are constrained to conclude that the statute as applied is arbitrary and without reasonable relation to any end within the competency of the state.
>
> "As the statute undertakes to interfere only with teaching which involves a modern language, leaving complete freedom as to other matters, there seems no adequate foundation for the suggestion that the purpose was to protect the child's health by limiting his mental activities. It is well known that proficiency in a foreign language seldom comes to one not instructed at an early age, and experience shows that this is not injurious to the health, morals, or understanding of the ordinary child."

In this connection we beg leave to call to the court's attention the following excerpt from the dissenting opinion of Mr. Justice Holmes in the case of *Truax v. Corrigan*, 257 U. S. 312, Sup. Ct. Rep. 312, 376, 66 L. Ed. 254, 268:

> "I must add one general consideration. There is nothing that I more deprecate than the use of the fourteenth amendment beyond the absolute compulsion of its words to prevent the making of social experiments that an important part of the community desires, in the insulated chambers afforded by the several states, even though the experiments may seem futile or even noxious to me and to those whose judgment I most respect. * * *"

The case of *Adams v. Tanner*, 244 U. S. 590, 61 L. Ed. 1336, is urged by appellee as being conclusive of the questions involved in the instant case.

As we understand that case, it involved the right of a citizen of the United States to engage in a useful and usual occupation. The statute involved was held by the court to be prohibitory, rather than regulatory, and we understand the court to have held (page 1343 Rep. in 61 L. Ed.):

> "'The fourteenth amendment protects the citizen in his right to engage in any lawful business, but it does not prevent legislation intended to regulate useful occupations which, because of their nature or location may prove injurious or offensive to the public. Neither does it prevent a municipality from prohibiting any business which is inherently vicious and harmful. But, between the useful business which may be regulated and the vicious business which can be prohibited lie many non-useful occupations which may, or may not, be harmful to the public, according to local conditions, or the manner in which they are conducted.' *Murphy v. California*, 225 U. S. 623, 628, 56 L. ed. 1229, 1232, 41 L. R. A. (N. S.) 153, 32 Sup. Ct. Rep. 697."

We submit that the said case presents a question quite distinct from one involving the right of a state to require that all children between the ages of eight and sixteen years attend schools which are provided and maintained by the state as a part of its governmental functions, and the personal right or liberty of parents to have their children attend a parochial or private school, when it does not appear that the training received by the children in such private or parochial schools is superior in sixteen years attend schools which are provided and maintained by the state as a part of its governmental functions, and the personal right or liberty of parents to have their children attend a parochial or private school, when it does not appear that the training received by the children in such private or parochial schools is superior in any way to that which they would receive in public schools, and when it does appear that the liberty claimed to be denied by such a law is liberty to give sectarian religious instruction in connection with common school training; a thing which no one would have the temerity to demand as part of the course of instruction in the public schools."

Truax v. Raich, 239 U. S. 33, 36 Sup. Ct. Rep. 7, 60 L. Ed. 131, L. R. A. 1916D, 545 Ann. Cas. 1917B, 243. In that case it was held (page 134, Report in L. Ed):

"* * * Being lawfully an inhabitant of Arizona, the complainant is entitled under the fourteenth amendment to the equal protection of its laws. The description, 'any person within its jurisdiction', as it has frequently been held, includes aliens. * * *"

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"It is sought to justify this act as an exercise of the power of the state to make reasonable classifications in legislating to promote the health, safety, morals, and

welfare of those within its jurisdiction. But this admitted authority, with the broad range of legislative discretion that it implies, does not go so far as to make it possible for the state to deny to lawful inhabitants, because of their race or nationality, the ordinary means of earning a livelihood. It requires no argument to show that the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the amendment to secure.

* * * * *

"If this could be refused solely upon the ground of race or nationality, the prohibition of the denial to any person of the equal protection of the laws would be a barren form of words. It is no answer to say, as it is argued, that the act proceeds upon the assumption that 'the employment of aliens, unless restrained, was a peril to the public welfare.' The discrimination against aliens in the wide range of employments to which the act relates is made an end in itself, and thus the authority to deny to aliens, upon the mere fact of their alienage, the right to obtain support in the ordinary fields of labor, is necessarily involved. It must also be said that reasonable classification implies action consistent with the legitimate interests of the state, and it will not be disputed that these can not be so broadly conceived as to bring them into hostility to exclusive federal power. The authority to control immigration—to admit or exclude aliens—is vested solely in the federal government. *Fong Yue Ting v. United States*, 149 U. S. 698, 713, 37 L. ed. 905, 913, 13 Sup. Ct. Rep. 1016. The assertion of an authority to deny to aliens the opportunity of earning a livelihood when lawfully admitted to the state would be tantamount to the assertion of the right to deny them entrance and abode, for in ordinary cases they can not live where they can not work. And, if such a policy were permissible, the practical result would be that those lawfully admitted to the country

under the authority of the acts of congress, instead of enjoying in a substantial sense and in their full scope the privileges conferred by the admission, would be segregated in such of the states as chose to offer hospitality.

"It is insisted that the act should be supported because it is not 'a total deprivation of the right of the alien to labor'; that is, the restriction is limited to those businesses in which more than five workers are employed, and to the ratio fixed. It is emphasized that the employer in any line of business who employs more than five workers may employ aliens to the extent of 20 per cent of his employes. But the fallacy of this argument at once appears. If the state is at liberty to treat the employment of aliens as in itself a peril, requiring restraint regardless of kind or class of work, it can not be denied that the authority exists to make its measures to that end effective. *Otis v. Parker*, 187 U. S. 606, 47 L. ed. 323, 23 Sup. Ct. Rep. 168; *New York ex rel. Silz v. Hesterberg*, 211 U. S. 31, 53 L. ed. 75, 29 Sup. Ct. Rep. 10; *Purity Extract & Tonic Co. v. Lynch*, 226 U. S. 192, 57 L. ed. 184, 33 Sup. Ct. Rep. 44. If the restriction to 20 per cent now imposed is maintainable, the state undoubtedly has the power, if it sees fit, to make the percentage less. We have nothing before us to justify the limitation to 20 per cent save the judgment expressed in the enactment, and if that is sufficient, it is difficult to see why the apprehension and conviction thus evidenced would not be sufficient were the restriction extended so as to permit only 10 per cent of the employes to be aliens, or even a less percentage; or were it made applicable to all businesses in which more than three workers were employed instead of applying to those employing more than five. We have frequently said that the legislature may recognize degrees of evil and adapt its legislation accordingly (*Consolidated Coal C. v. Illinois*, 185 U. S. 203, 207, 46 L. ed. 872, 22 Sup. Ct. Rep. 616; *McLean v. Arkansas*, 211 U. S. 539, 551, 53 L. ed. 315, 321, 29 Sup. Ct. Rep. 206; *Miller v. Wilson*, 236 U. S. 373, 384, 59 L. ed. 628, 632, 35 Sup.

Ct. Rep. 342); but underlying the classification is the authority to deal with that at which the legislation is aimed. The restriction now sought to be sustained is such as to suggest no limit to the state's power of excluding aliens from employment if the principle underlying the prohibition of the act is conceded. No special public interest with respect to any particular business is shown that could possibly be deemed to support the enactment, for, as we have said, it relates to every sort. The discrimination is against aliens as such in competition with citizens in the described range of enterprises, and in our opinion it clearly falls under the condemnation of the fundamental law."

For reasons heretofore stated in connection with argument regarding the effect of the decision of this court in the cases of *Meyer v. Nebraska, supra,* and *Adams v. Tanner, supra,* we submit that the decision in the case of *Truax v. Raich* is not controlling as to the issues involved in the instant case.

Terrace v. Thompson, Advance, Sheet No. 3, p. 35, U. S. Supreme Court Advance Opinions, December 1, 1923. This case presents a question involving the rights of aliens and upholds a statute denying to them the right to own or control agricultural land, as constituting a reasonable exercise of the police power, pursuant to a federal law withholding from certain aliens, whose rights were involved, the privilege of naturalization. It distinguishes the rights of such aliens from the rights of aliens involved in the case of *Truax v. Raich, supra.* We refer to this case for the reason that its principles were invoked by appellee in the lower court, and because it contains a recent expression of this court regarding the police powers of the states in matters of public policy.

Appellant again invites the attention of the court to the rule stated in *Powell v. Pennsylvania*, 127 U. S. 678, 32 L. Ed. 253, 256-257, and other cases involving the validity of statutes enacted in the exercise of the police power for the purpose of meeting conditions which the legislature deemed it advisable to correct, and in enacting which the legislature is presumed to have investigated the questions of fact upon which its conclusion that such legislation was required were based, that the legislature is the exclusive judge of the necessity for such legislation and that where the question presented to the court involves the determination of matters of fact this court will not investigate such questions or pass upon the necessity for such legislation.

In this case it is to be presumed that the legislature and the people of the state investigated the question of the necessity for such legislation and found and determined, as a question of fact, that the instruction given to children of the ages affected by the amendment in the public schools of the state was better and more complete than that provided by private institutions; that facilities for protecting the health of such children when in school were better provided for in the public schools than in private institutions, and that every other fact upon which such legislation might properly be based, was inquired into by them and found to require such legislation. In that respect the case differs materially from that of *Meyer v. Nebraska, supra*, where the court was enabled to take judicial notice of the fact that the mere teaching of the German language did not in and of itself have such an effect as to warrant an exercise of the police power denying to one, who depended upon the giving of

such instruction as a means of livelihood, the right to teach that language, or such effect as to warrant depriving parents of their right to have their children so instructed.

Respectfully submitted,

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In pro per

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Attorneys for Appellant, Isaac H. Van Winkle, Attorney-General.

FEB 2 1925

(20,510)

Supreme Court of the United States

OCTOBER TERM, 1924

No. 454

WALTER M. PIERCE, as Governor of the State of Oregon, ISAAC H. VAN WINKLE, as Attorney-General of the State of Oregon, and STANLEY MYERS, as District Attorney for Multnomah County, State of Oregon,

Appellants,

vs.

HILL MILITARY ACADEMY

Appeal from the District Court of the United States for the District of Oregon.

Brief of Appellant, Isaac H. Van Winkle

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(30,549)

SUPREME COURT
OF THE
UNITED STATES

OCTOBER TERM, 1924

No. 584

WALTER M. PIERCE, as Governor of the State of Oregon; ISAAC H. VAN WINKLE, as Attorney-General of the State of Oregon, and STANLEY MYERS, as District Attorney for Multnomah County, State of Oregon,

Appellants,

vs.

HILL MILITARY ACADEMY

Appeal from the District Court of the United States for the District of Oregon

Brief of Appellant, Isaac H. Van Winkle

STATEMENT

Appellee is a private corporation, organized and existing under the laws of the state of Oregon, and is engaged in conducting a private school in the city of Portland in said state, in which it affords educational training to children of common school age, which it alleges to conform in all respects to the training received by children of like age in the public schools of Oregon.

Appellee further alleges that it owns and maintains valuable property and equipment which is used in conducting said school and the value of which would be materially reduced if it were forced to discontinue the operation of same.

On the 7th day of November, 1922, there was submitted to and enacted by the legal voters of the state of Oregon a certain measure which, for convenience, is herein set out in full, in parallel columns with the law as it existed prior to the adoption of said measure:

OLD LAW	NEW LAW
Sec. 5259. *Children Between the Ages of Nine and Fifteen Years.*—Every parent, guardian or other person in the state of Oregon having control or charge of any child, or children between and including the ages of nine and fifteen years of age, shall be required to send such child or children to the public schools for a term or period of not less or more than the number of months of public school held annually in the district in which such parents, guardians or other persons in parental relation may reside; provided, that in the following cases, children shall not be required to attend public schools:	Sec. 5259. *Children Between the Ages of Eight and Sixteen Years.*—Any parent, guardian, or other person in the state of Oregon, having control or charge or custody of a child under the age of sixteen years and of the age of eight years or over at the commencement of a term of public school of the district in which said child resides, who shall fail or neglect or refuse to send such child to a public school for the period of time a public school shall be held during the current year in said district, shall be guilty of a misdemeanor and each day's failure to send such child to a public school shall constitute a separate offense; provided, that in the following cases children shall not be required to attend public schools:

(a) *Children Being Taught in Private School*—Any child, or children, who is or are being taught for a like period of time in a private or parochial school such branches as are usually taught in the first eight years in the public schools, or has, or have, already acquired the ordinary branches of learning taught in such schools the fact of which acquisition of such ordinary branches of learning by such child, or children, shall be determined by the school board in charge of the public school in such district;

(b) *Children Physically Unable*—Any child, or children, who is, or are physically unable to attend school. In such cases the truant officer shall require a written statement of a competent physician certifying that such child, or children, is, or are physically unable to attend school;

(c) *Distance from School*—Children between the ages of nine and ten years of age whose parents live more than one and one-half miles, and children over ten years of age whose parents live more than three miles, by the

(a) *Children Physically Unable*—Any child who is abnormal, subnormal or physically unable to attend school.

(b) *Children Who Have Completed the Eighth Grade*—Any child who has completed the eighth grade, in accordance with the provisions of the state course of study.

(c) *Distance from School*—Children between the ages of eight and ten years, inclusive, whose place of residence is more than one and one-half miles, and children over ten years of age whose place of residence is more

nearest traveled road, from some public school; provided, that if transportation is furnished pupils in said district this exemption shall not apply.

(d) *Private Instruction*—Any child, or children, who is, or are, being taught for a like period of time by the parent or private teacher such subjects as are usually taught in the first eight years in the public school, but before such child, or children, can be taught by a parent or private teacher, such parent or private teacher must receive written permission from the county superintendent, who is hereby authorized to grant such permission only in case of necessity, and such permission shall not extend longer than the end of the current school year. Such child, or children, must report to the county school superintendent or some person designated by him at least once every three months and take an examination in the work covered. If after such examination the county superintendent shall determine that such child, or children, is, or are, not being properly taught,

than three miles, by the nearest traveled road, from a public school; provided, however, that if transportation to and from school is furnished by the school district, this exemption shall not apply.

(d) *Private Instruction*—Any child who is being taught for a like period of time by the parent or private teacher such subjects as are usually taught in the first eight years in the public school; but before such child can be taught by a parent or a private teacher, such parent or a private teacher must receive written permission from the county superintendent, and such permission shall not extend longer than the end of the current school year. Such child must report to the county school superintendent or some person designated by him at least once every three months and take an examination in the work covered. If, after such examination, the county superintendent shall determine that such child is not being properly taught, then the county superintendent shall order the parent, guardian or other person, to send such child to the public school the remainder of the school year.

then the county superintendent shall order the parent, guardian or other person in parental relation to send such child, or children, to school the remainder of the school year. Failure on the part of the parent, guardian or other person in parental relation to comply with the order of the county superintendent shall render such person liable to the penalty provided for in this act.

Sec. 5260. *Penalty for Failure by Parent, etc., to Comply*—In case any parent or other person in parental relation shall fail to comply with the provisions of this act he shall be deemed guilty of a misdemeanor and shall, on conviction thereof, be liable to a fine of not less than $5, nor more than $25, or by imprisonment in the county or city jail not less than two nor more than ten days, or by both such fine and imprisonment in the discretion of the court.

If any parent, guardian or other person having control or charge or custody of any child between the ages of eight and sixteen years, shall fail to comply with any provision of this section, he shall be guilty of a misdemeanor, and shall, on conviction thereof, be subject to a fine of not less than $5, nor more than $100, or to imprisonment in the county jail not less than two nor more than thirty days, or by both such fine and imprisonment in the discretion of the court.

This act shall take effect and be and remain in force from and after the first day of September, 1926.

On the 17th day of December, 1923, appellee filed in the District Court of the United States for the District of Oregon its amended bill of complaint, which reads in part as follows:

IX

"That said pretended law is void and violates and contravenes the Constitution of the United States and more particularly section 10 of article I of the Constitution of the United States, and section 1 of article XIV of the amendments to the Constitution of the United States in that it deprives plaintiff of its property without due process of law, denies to plaintiff the equal protection of the laws and impairs the obligations of plaintiff's contracts.

X

"That said defendants and each of them now publicly declare and publish that said pretended law is a valid law of the state of Oregon, and publicly declare and threaten that they and each of them will enforce said pretended law from and after the date it becomes operative by its terms.

XI

"That by reason of said pretended law and defendants' threat to enforce the same when it becomes operative by the terms thereof, plaintiff's said business is now being destroyed and rendered valueless and plaintiff is now being deprived of its property rights therein; and plaintiff's said property is being depreciated in value and large percentage thereof rendered wholly valueless. That by reason of said pretended law and defendants' threat to enforce the same, parents and guardians are refusing to enter into contracts with plaintiff for placing their sons and wards in said elementary department of school and are withdrawing their sons and wards from said elementary department in said school and placing them in other schools of a like nature which are not threatened with destruction. That,

by reason of said pretended law and defendants' threat to enforce the same, pliantiff is unable to enter into contracts for future supplies and equipment and for alterations, improvements and repairs in connection with said school, without which contracts plaintiff's said business can not be conducted at a profit, and plaintiff is unable to obtain loans from financial institutions and elsewhere to meet its future needs in conducting said business. That unless defendants are restrained from threatening to enforce said pretended law as soon as it becomes operative by the terms thereof plaintiff will suffer an irreparable injury for which it has no plain, speedy or adequate remedy at law.

"Wherefore, plaintiff prays that said pretended law be declared to be unconstitutional and void and that this honorable court grant unto plaintiff an interlocutory writ of injunction enjoining and restraining defendants and each of them from publicly threatening to enforce said pretended law on and after September 1, 1926, and from publishing and declaring that said pretended law is a valid law of the state of Oregon, and that upon the final hearing of this cause said injunction be made perpetual and that plaintiff have such other and further relief as to the court may see equitable."

A motion to dismiss the said amended bill of complaint was filed by the defendants, and the cause, with its companion case of the Society of the Sisters of the Holy Names of Jesus and Mary versus the same defendants, was heard by three judges, and a judgment entered and filed in said cause on the 31st day of March, 1924, overruling the said motion to dismiss and enjoining the defendants and each of them from publishing and declaring that said act is a valid law of the state of Oregon, and from threatening to enforce said act from and after the 1st day of September, 1926, and from attempting to enforce said act from and after said date. The matter is brought to this court by an appeal from the said judgment order.

ASSIGNMENTS OF ERROR

The appellants assign for error:

I

That the court erred in enjoining the enforcement of the statute enacted by the electors of Oregon under the initiative on the 7th day of November, 1922, and set forth at large in the seventh paragraph of the amended bill of complaint, which statute is also set forth as chapter one of the General Laws of Oregon for the year 1923 in the compilation of the said General Laws of Oregon officially published by the State of Oregon.

II

The court erred in holding the statute set forth at large in the seventh paragraph of plaintiff's amended bill of complaint, which statute is also described as chapter one of the General Laws of Oregon for the year 1923 as violative of the constitutional rights of plaintiff.

III

The court erred in holding that the statute set forth at large in the seventh paragraph of the amended bill of complaint of plaintiff and published as chapter one of the General Laws of Oregon for the year 1923 is unconstitutional and void.

IV

The court erred in holding that plaintiff is in a position to raise the legal questions relied upon by it and determined in its favor by the above entitled court on the 31st of March, 1924.

V

The court erred in failing to sustain the motion of defendants to dismiss plaintiff's amended bill of complaint.

VI

The court erred in failing to hold that plaintiff's suit is prematurely brought and that the injunction prayed for by plaintiff should for this reason be denied.

VII

The court erred in passing an injunction order as against the defendant, Walter M. Pierce, as Governor of Oregon.

VIII

The court erred in passing an injunction order as against the defendant, Isaac H. Van Winkle, as Attorney General of Oregon.

IX

The court erred in passing an injunction order against the defendant, Stanley Myers, as District Attorney for Multnomah County, Oregon.

X

The court erred in restraining the expression and publication of the opinions of the defendants as to the constitutionality of the statute adopted under the initiative by the people of Oregon on the 7th of November, 1922, and published as chapter one of the General Laws of Oregon for 1923.

XI

The court erred in passing an injunctive order which fails to specify the acts on the part of defendants which are enjoined except only the expression and publication of the opinions of defendants set forth in the ninth assignment of error.

XII

The court erred in passing an injunctive order vague and uncertain as to the acts undertaken to be restrained and enjoined.

XIII

The court erred in holding that the statute so adopted under the initiative on the 7th day of November, 1922, and set forth at large in the seventh paragraph of the amended bill of complaint which statute is also published as chapter one of the General Laws of Oregon for the year 1923 in the official compilation of the said laws, is in conflict with the Constitution of the United States and particularly with the Fourteenth Amendment thereto.

POINTS AND AUTHORITIES

I

The fourteenth amendment does not remove or restrict the power of the states to enact laws necessary to promote the health, safety, peace, morals, education or general welfare of its people.

Munn v. People of Illinois, 94 U. S. 278, 24 L. Ed. 77, 83;

Boston Beer Co. v. Massachusetts, 97 U. S. 25, 24 L. Ed. 989, 992;

Barbier v. Connolly, 113 U. S. 27, 31, 28 L. Ed. 923, 924, 5 Sup. Ct. Rep. 357;

Mugler v. Kansas, 123 U. S. 623, 666, 31 L. Ed. 205, 210, 8 Sup. Ct. Rep. 273;

Powell v. Pennsylvania, 127 U. S. 678, 8 S. C. R. 992, 32 L. Ed. 253, 255, 257;

Re Kemmler, 136 U. S. 436, 449, 34 L. Ed. 519, 524, 10 Sup. Ct. Rep. 930;

Crowley v. Christensen, 137 U. S. 86, 34 L. Ed. 620, 623;

Jones v. Brim, 165 U. S. 180, 182, 41 L. Ed. 677, 678, 17 Sup. Ct. Rep. 282;

Jacobson v. Massachusetts, 197 U. S. 11, 49 L. Ed. 643, 649, 651, 652;

Interstate Consol. Street R. Co. v. Massachusetts, 207 U. S. 79, 52 L. Ed. 111, 115;

McLean v. Arkansas, 211 U. S. 539, 53 L. Ed. 315, 319, 320;

Middleton v. Texas Power & L. Co., 249 U. S. 152, 63 L. Ed. 527, 531;

N. O. Gas Light Co. v. Louisiana Light, etc., Mfg Co., 115 U. S. 650, 29 L. Ed. 516, 520;

Slaughter House Cases, 16 Wall. 22, 21 L. Ed. 394, 404-410;

Stone v. Mississippi, 101 U. S. 814, 25 L. Ed. 1079, 1080;

Sanitary District of Chicago v. United States, Advance Opinion No. 161, October Term, 1924, January 5, 1925.

II

The provisions of a corporation charter and of any law pursuant to which a corporation may have entered into valid contracts, are subject to modification and annulment under the police power.

Boston Beer Co. v. Massachusetts, 97 U. S. 25, 24 L. Ed. 989, 992;
Stone v. Mississippi, 101 U. S. 814, 25 L. Ed. 1079, 1080;
The Mayor, etc., of the City of New York v. Miln, 11 Peters 102, 9 L. Ed. 648, 660;
Eagle Insurance Co. v. State of Ohio, 153 U. S. 449, 38 L. Ed. 778, 780;
Chicago B. & Q. Co. v. State of Nebraska ex rel. Omaha, 170 U. S. 59, 52 L. Ed. 948, 953;
Pacific Gas & E. Co. v. Police Court, 251 U. S. 22, 64 L. Ed. 112, 117;
Thornton v. Duffy, 254 U. S. 361, 65 L. Ed. 304, 309;
Chicago L. Ins. Co. v. Needles, 113 U. S. 574, 28 L. Ed. 1084, 1087.

III

As to minors, the state stands in the position of parens patriae and may exercise unlimited supervision and control over their contracts, occupation and conduct and the liberty and right of those who assume to deal with them.

State v. Shorey, 48 Or. 396, 398;
Stettler v. O'Hara, 69 Or. 519;
State v. Bunting, 71 Or. 259;
Gibbons v. Gibbons, 75 Or. 500, 503;
Merges v. Merges, 94 Or. 246, 252;
State v. Bailey, 157 Ind. 324, 59 L. R. A. 435, 537;
Sturges & Burn Mfg. Co. v. Beauchamp, 231 U. S. 320, 58 L. Ed. 245, 249;

Muller v. Oregon, 208 U. S. 412, 52 L. Ed. 551, 555;
Starnes v. Albion Mfg. Co., 147 N. C. 566, 61 S. E. 525, 17 L. R. A. (N. S.) 602, and notes, 15 Ann. Cas. 470, and notes;
People v. Ewer, 141 N. Y. 129, 36 N. E. 4, 25 L. R. A. 794;
Berea College v. Commonwealth, 123 Ky. 209, 94 S. W. 623, 13 Ann. Cas. 337;
State v. Jackson, 71 N. H. 552, 53 Atl. 1021, 60 L. R. A. 739;
Commonwealth v. Roberts, 159 Mass. 372, 34 N. E. 402;
State v. Counort, 69 Wash. 321, 124 Pac. 910, 41 L. R. A. (N. S.) 95;
Meyer v. Nebraska, 262 U. S. 390, 67 L. Ed. 1042, 1045, 1046;
Schouler on Domestic Relations, 5th Ed., Sec. 235, 20 R. C. L. 597;
In re Turner, 49 Kan. 115, 145 Pac. 871, Ann. Cas. 1916E, 1022, 1024;
Vanwalters v. Board of Children's Guardians, 132 Ind. 567, 32 N. E. 568, 18 L. R. A. 431, 432;
State v. Rose, 125 La. 462, 51 So. 496, 26 L. R. A. (N. S.) 821;
Ex parte Powell, 6 Okla. Cr. Pr. 495, 120 Pac. 1022, 1028;
Egoff v. Board of Children's Guardians, 170 Ind. 238, 84 N. E. 151, 155;
U. S. v. Behrendsohn, 197 Fed. 953;
Beauchamp v. Sturges Mfg. Co., 231 U. S. 320, 58 L. Ed. 245, 249, L. R. A. 1915A, 1196;
Interstate Company v. Massachusetts, 207 U. S. 79, 52 L. Ed. 111, 115, 12 Ann. Cas. 555, 557.

ARGUMENT

The statute involved in this proceeding is intended to compel all children between the ages of eight and sixteen years to attend public schools, with certain exceptions not material to this case. It applies to parents, guardians or other persons having control or charge or custody of such children, and provides a penalty.

It is not contended that appellee is directly affected in the sense that it could be punished for violation of the statute. Its claim of right to institute this suit is based upon property damage which it alleges will result to it from the enforcement of the law and is now being sustained by it by reason of threats on the part of the appellants to enforce the law.

It might be urged that under such circumstances the appellee cannot invoke the aid of this court to protect it from incidental injury and damages that may result from the enforcement or threatened enforcement of the law.

Rosenthal v. New York, 226 U. S. 260, 271, 57 L. Ed. 212, 217, Ann. Cas. 1914B, 71, 74;
Jeffrey Mfg. Co. v. Blagg, 235 U. S. 571, 576, 59 L. Ed. 364, 368;
Arkadelphia Mill Co. v. St. Louis Co., 249 U. S. 134, 149, 63 L. Ed. 517, 526;
Middletown v. Texas Power Co., 249 U. S. 152, 157, 63 L. Ed. 527, 531;
Underwood Typewriter Co. v. Chamberlain, 254 U. S. 113, 65 L. Ed. 165, 170;
Marye v. Parsons, 114 U. S. 325, 29 L. Ed. 205, 206;
Hagood v. Southern, 117 U. S. 52, 29 L. Ed. 805;
Ex parte Ayres, 123 U. S. 443, 31 L. Ed. 216, 226;
McCabe v. Atchison Ry., 235 U. S. 151, 162, 59 L. Ed. 169, 174;

However, it will be to the manifest interest of all persons concerned if the court will disregard all technical questions involving delay and proceed to the determination of the constitutional question. With that end in view, argument upon any question regarding the incapacity of appellee to bring this suit and whether or not the suit is premature is waived.

Point No. I

It was early announced by this court that it is "easier to determine whether particular cases come within the general scope of the power than to give an abstract definition of the power itself which will be in all respects accurate".

Stone v. Mississippi, 16 Wall. 62, 25 L. Ed. 1079, 1080;

N. O. Gas Light Co. v. Louisiana Light, etc., Mfg. Co., 115 U. S. 650, 29 L. Ed. 516, 520.

So many different conditions and circumstances have required consideration that this appellant will presume to take time and space necessary for a brief resume of the principles announced by the court in some of the leading cases.

In *Munn v. People of Illinois,* 94 U. S. 278, 24 L. Ed. 77, 83, the court, by Mr. Chief Justice Waite, in discussing the scope of the fourteenth amendment, said:

> "When one becomes a member of society, he necessarily parts with some rights or privileges, which, as an individual not affected by his relations to others, he may retain. 'A body politic,' as amply defined in the preamble of the constitution of Massachusetts, 'is a social compact by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good'."

In *Boston Beer Co.* v. *Massachusetts*, 97 U. S. 25, 24 L. Ed. 989, 992, this court, by Mr. Justice Bradley, said:

"Whatever differences of opinion may exist as to the extent and boundaries of the police power, and however difficult it may be to render a satisfactory definition of it, there seems to be no doubt that it does extend to the protection of the lives, health and property of the citizens, and to the preservation of good order and the public morals."

In *Mugler* v. *Kansas*, 123 U. S. 623, 31 L. Ed. 205, 210, the court, by Mr. Justice Harlan, said:

"But by whom, or by what authority, is it to be determined whether the manufacture of particular articles of drink, either for general use or for the personal use of the maker, will injuriously affect the public? Power to determine such questions, or as to what all must concede, the courts will be at the mercy of the few who, regarding only their own appetites or passions, may be willing to imperil the peace and security of the many, provided only they are permitted to do as they please. Under our system that power is lodged with the legislative branch of the government. It belongs to that department to exert what are known as the police powers of the state, and to determine, primarily, what measures are appropriate or needful for the protection of the public morals, the public health, or the public safety."

In *Powell* v. *Pennsylvania*, 127 U. S. 678, 32 L. Ed. 253, 257, the court, by Mr. Justice Harlan, said:

"... The legislature of Pennsylvania, upon the fullest investigation, as we must conclusively presume, and upon reasonable grounds, as must be assumed from the record, has determined that the prohibition of the sale or offering for sale, or having in possession to sell, for purposes of food, of any article manufactured

not of oleaginous substances or compounds other than those produced from unadulterated milk or cream from unadulterated milk, to take the place of butter produced from unadulterated milk or cream from unadulterated milk, will promote the public health, and prevent frauds in the sale of such articles. If all that can be said of this legislation is that it is unwise, or unnecessarily oppressive to those manufacturing or selling wholesome oleomargarine, as an article of food, their appeal must be to the legislature, or to the ballot box, and not to the judiciary. The latter can not interfere without usurping powers committed to another department of government.

"It is argued, in behalf of the defendant, that if the statute in question is sustained as a valid exercise of legislative power, there is nothing to stand in the way of the destruction by the legislative department of the constitutional guaranties of liberty and property. But the possibility of the abuse of legislative power does not disprove its existence. That possibility exists even in reference to powers that are conceded to exist. Besides, the judiciary department is bound not to give effect to enactments ascertained to be plainly forbidden by the constitution. This duty, the court has said, is always one of extreme delicacy; for, apart from the necessity of avoiding conflicts between coordinate branches of the government, whether state or national, it is often difficult to determine whether such enactments are within the powers granted to or possessed by the legislatures. Nevertheless, if the incompatibility of the constitution and the statute is clear or palpable, the courts must give effect to the former. And such would be the duty of the court if the state legislature, under the pretense of protecting the public health, the public morals, or the public safety, should invade the rights of life, liberty, or property, or other rights, secured by the supreme law of the land."

In *Jacobson v. Massachusetts*, 197 U. S. 11, 49 L. Ed. 643, 651, the court, by Mr. Justice Harlan, said:

"* * * We must assume that, when the statute in question was passed, the legislature of Massachusetts was not unaware of these opposing theories, and was compelled, of necessity, to choose between them. It was not compelled to commit a matter involving the public health and safety to the final decision of a court or jury. It is no part of the function of a court or a jury to determine which one of two modes was likely to be the most effective for the protection of the public against disease. That was for the legislative department to determine in the light of all the information it had or could obtain. It could not properly abdicate its function to guard the public health and safety. The state legislature proceeded upon the theory which recognized vaccination as at least an effective, if not the best known, way to which to meet and suppress the evils of a smallpox epidemic that imperiled an entire population. Upon what sound principles as to the relations existing between the different departments of government can the court review this action of the legislature? If there is any such power in the judiciary to review legislative action in respect of a matter affecting the general welfare, it can only be when that which the legislature has done comes within the rule that, if a statute purporting to have been enacted to protect the public health, the public morals, or the public safety, has no real or substantial relation to those objects, or is, beyond all question, a plain, palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the Constitution. *Mugler v. Kansas*, 123 U. S. 623, 661, 31 L. Ed. 205, 210, 8 Sup. Ct. Rep. 273; *Minnesota v. Barber*, 136 U. S. 313, 320, 34 L. Ed. 455, 458, 3 Inters. Com. Rep. 185, 10 Sup. Ct. Rep. 862; *Atkin v. Kansas*, 191 U. S. 207, 223, 48 L. Ed. 148, 158, 24 Sup. Ct. Rep. 124."

In *Interstate Consol. Street R. Co. v. Massachusetts*, 207 U. S. 79, 52 L. Ed. 111, this court, by Mr. Justice Holmes, said (page 115, L. Ed.):

"If the fourteenth amendment is not to be a greater hamper upon the established practices of the states in common with other governments than I think was intended, they must be allowed a certain latitude in the minor adjustments of life, even though by their action the burdens of a part of the community are somewhat increased. The traditions and habits of centuries were not intended to be overthrown when that amendment was passed.

"Education is one of the purposes for which what is called the police power may be exercised. *Barbier v. Connolly*, 113 U. S. 27, 31, 28 L. Ed. 923, 924, 5 Sup. Ct. Rep. 357. Massachusetts always has recognized it as one of the first objects of public care. * * *"

In *McLean v. Arkansas*, 211 U. S. 539, 53 L. Ed. 315, 319, this court, by Mr. Justice Day, said:

"The legislature, being familiar with local conditions, is, primarily, the judge of the necessity of such enactments. The mere fact that a court may differ with the legislature in its views of public policy, or that judges may hold views inconsistent with the propriety of the legislation in question, affords no ground for judicial interference, unless the act in question is unmistakably and palpably in excess of legislative power. *Jacobson v. Massachusetts, supra, Mugler v. Kansas*, 123 U. S. 623, 31 L. Ed. 205, 8 Sup. Ct. Rep. 273; *Minnesota v. Barber*, 136 U. S. 313, 320, 34 L. Ed. 455, 458, 3 Inters. Com. Rep. 185, 10 Sup. Ct. Rep. 862; *Atkin v. Kansas*, 191 U. S. 207, 223, 48 L. Ed. 148, 158, 24 Sup. Ct. Rep. 124.

"If the law in controversy has a reasonable relation to the protection of the public health, safety, or welfare, it is not to be set aside because the judiciary may be of opinion that the act will fail of its purpose, or because it is thought to be an unwise exertion of the authority vested in the legislative branch of the government."

In *Middleton v. Texas Power & L. Co.*, 249 U. S. 152, 63 L. Ed. 527, 531, this court by Mr. Justice Pitney, said:

> "There is a strong presumption that a legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience, and that its discriminations are based upon adequate grounds. The equal protection clause does not require that state laws shall cover the entire field of proper legislation in a single enactment. If one entertained the view that the act might as well have been extended to other classes of employment, this would not amount to a constitutional objection. *Rosenthal v. New York*, 226, U. S. 260, 271, 57 L. Ed. 212, 217, 33 Sup. Ct. Rep. 27. Ann. Cas. 1914B, 71; *Patsone v. Pennsylvania*, 232 U. S. 138, 144, 58 L. Ed. 539, 543, 34 Sup. Ct. Rep. 281; *Missouri, K. & T. R. Co. v. Cade*, 233 U. S. 642, 649, 650, 58 L. Ed. 1135, 1138, 34 Sup. Ct. Rep. 678; *International Harvester Co. v. Missouri*, 234 U. S. 199, 215, 58 L. Ed. 1276, 1283, 52 L. R. A. (N. S.) 525, 34 Sup. Ct. Rep. 859; *Koekee Consol. Coke Co. v. Taylor*, 234 U. S. 224, 227, 58 L. Ed. 1288, 34 Sup. Ct. Rep. 856; *Miller v. Wilson*, 236 U. S. 373, 384, 59 L. Ed. 628, 632, L. R. A. 1915F, 829, 35 Sup. Ct. Rep. 342.
>
> "The burden being upon him who attacks a law for unconstitutionality, the courts need not be ingenious in searching for grounds of distinction to sustain a classification that may be subjected to criticism. * * *"

Point No. II

One of the alleged grounds of illegality is: "That said pretended law denies to plaintiff the equal protection of the laws and impairs the obligation of plaintiff's contracts."

In answer to that objection, citations from a few of the cases in which it has been considered by this court follow.

Boston Beer Co. v. Massachusetts, 97 U. S. 25; 24 L. Ed. 989, 992:

"* * * The plaintiff in error boldly takes the ground, that, being a corporation it has a right, by contract, to manufacture and sell beer forever, notwithstanding and in spite of any exigencies which may occur in the morals or the health of the community, requiring such manufacture to cease. We do not so understand the rights of the plaintiff. The legislature had no power to confer any such rights.

* * * * * * *

"The legislature can not, by any contract, divest itself of the power to provide for these objects. They belong emphatically to that class of objects which demand the application of the maxim, solus populi suprema lex; and they are to be attended and provided for by such appropriate means as the legislative discretion may devise. That discretion can no more be bargained away than the power itself. *Boyd v. Alabama* (Ante. 302)."

Stone v. Mississippi, 101 U. S. 814, 25 L. Ed. 1079, 1080:

"All agree that the legislature can not bargain away the police power of a state. 'Irrevocable grants of property and franchises may be made if they do not impair the supreme authority to make laws for the right government of the state; but no legislature can curtail the power of its successors to make such laws as they may deem proper in matters of police.' *Metropolitan Bd. of Excise v. Barrie,* 34 N. Y., 657; *Boyd v. Alabama,* 94 U. S. 645, 24 L. Ed. 302. Many attempts have been made in this court and elsewhere to define the police power, but never with entire success. It is always easier to determine whether a particular case comes

within the general scope of the power, than to give an abstract definition of the power itself which will be in all respects accurate. No one denies, however, that it extends to all matters affecting the public health or the public morals. * * *"

Thornton v. Duffy, 254 U. S., 361, 65 L. Ed., 304, 309:

"We repeat, we must accept the decision of the court as the declaration of the legislation and the requirement of the Constitution of the state, as much a part of both as if expressed in them (*Douglass v. Pike County,* 101 U. S. 677, 25 L. Ed. 968), and we are unable to yield to the contention that the legislation or the requirement transcends the power of the state, or in any way violates the Constitution of the United States. The law expressed the constitutional and legislative policy of the state to be that the compensation to workmen for injuries received in their employment was a matter of public concern, and should not be left to the individual employer or employe, or be dependent upon or influenced by the hazards of controversy or litigation, or inequality of conditions. There was an attempt at the accommodation of the new policy to old conditions in the concession to employers to deal directly with their employes, but there was precaution against failure in the provision of section 22, giving discretion to the commission to withdraw the concession. After a few years' experience, that discretion was turned into a duty, and by the amendment of March 20, 1917, the concession was taken away from those employers who indemnified themselves by insurance. This was considered necessary to execute the policy of the state, and we are unable to yield to the contention that property rights or contract rights had accrued against it. To assert that the first steps of a policy make it immutable is to assert that imperfections and errors in legislation become constitutional rights. This is a narrow conception of sovereignty. It is, however, not new, and we

have heretofore been invoked to pronounce judgment upon it. Complying, we said that an exercise of public policy can not be resisted because of conduct or contracts done or made upon the faith of former exercises of it, upon the ground that its later exercises deprive of property or invalidate those contracts. *Louisville & N. R. Co. v. Mottley,* 219 U. S. 467, 55 L. Ed. 297, 34 L. R. A. (N. S.) 671, 31 Sup. Ct. Rep. 265."

Chicago L. Ins. Co. v. Needles, 113 U. S. 574, 28 L. Ed. 1084, 1087:

"The case upon the merits, so far as they involve any question of which this court may take cognizance, is within a very narrow compass. The main proposition of the counsel is that the obligation of the contract which the company had with the State, in its original and amended charter, will be impaired if that company be held subject to the operation of subsequent statutes, regulating the business of life insurance and authorizing the courts, in certain contingencies, to suspend, restrain or prohibit insurance companies incorporated in Illinois from further continuance in business. This position can not be sustained, consistently with the power which the State has, and upon every ground of public policy must always have, over corporations of her own creation. Nor is it justified by any reasonable interpretation of the language of the company's charter. The right of the plaintiff in error to exist as a corporation, and its authority, in that capacity, to conduct the particular business for which it was created, were granted, subject to the condition that the privileges and franchises conferred upon it should not be abused, or so employed as to defeat the ends for which it was established, and that, when so abused or misemployed, they may be withdrawn or reclaimed by the State, in such way and by such modes of procedure as are consistent with law. Although no such condition is expressed in the company's charter, it is necessarily implied in every grant of corporate existence. *Terrett v. Taylor,* 9 Cranch, 51; Ang. & Ames, Corp. (9th ed.), sec. 774, note."

Point No. III

The inherent right of parents to the custody and control of their minor children is recognized and protected in every civilized nation. No more intimate relation exists in human society, and the life and welfare of such children are so dependent upon the protection and care of the parents as to afford no basis for argument regarding the nature of the parents' rights. It is equally well established that in matters relating to the general welfare of such children and of the public the rights of the parents are subject to the paramount right of the state to exercise control over such minors. This is well illustrated by the decisions of this court and numerous decisions of other federal courts, and of state courts, relating to the hours and places of employment of minors, compulsory vaccination, compulsory school laws, the custody of the children of divorced parents and of those who are incompetent mentally, morally or otherwise, to afford them such care and protection as the state may deem proper and necessary.

The only limitation upon such power on the part of the state is that it shall be exercised for a reasonable purpose and bear some reasonable and necessary relation to the health, morals or welfare of the child and of the state.

The superior right of the state to prescribe qualifications of teachers, uniform text books, courses of study, and other things which affect the personal rights and interests of pupils and parents is well established.

Donahoe v. Richards, 38 Me. 379, 61 Am. Dec. 356, 272, 273, 274, 275;

O'Connor v. Hendrick, 184 N. Y. 421, 77 N. E. 712, 7 L. R. A. (N. S.) 402.

RECOGNIZED CONTROL OF EDUCATION

In accordance with the foregoing principles, we are accustomed in this country to recognize the control by the state of the education of children.

Berea College v. Commonwealth, 123 Ky. 209, 94 S. W. 623, 13 Ann. Cas. 337, 24 U. S. 45, 53 L. Ed. 81,

In this case the Kentucky court upheld the validity of a statute requiring the segregation of the white and the colored races in the schools.

It is also well settled that the state in the exercise of the police power may require the compulsory education of children. Our research discloses the significant circumstance that there are but few cases in which this principle has been decided. The reason doubtless is that the American people with almost entire unanimity have acquiesced in the enactment and enforcement of compulsory education laws. Such authorities as there are bearing on the question speak with entire unanimity and the principle on which some of them are decided is broad enough to uphold the constitutionality of the statute now in question.

There is much significance in the fact that every state in the Union has a statute providing for the compulsory education of children. In five of the states the statutes resemble the Oregon statute in that attendance at a private school is not of itself a compliance with the statutory requirements. See

General Statutes of Connecticut of 1918, vol. 1, sec. 835, 839.

Laws of Maryland, 1916, c. 506, sub-chapter 21, sec. 162.

Birdseye, Cumming & Gilbert's Consolidated Laws of New York, 2d Ed. vol. 2, article 23, sec. 623.

Laws of Nevada, 1920-1921, c. 157, sec. 1, amending sec. 203 of the Act of March 20, 1911.

General Laws of Vermont, 1917, sec. 1254.

35 Cyc. 1122.

"A compulsory education law is not unconstitutional as an invasion of the natural right of a parent to govern and control his own children, as it is competent for the legislature to compel parents to perform the natural duty of education owed to their children."

State v. Jackson, 71 N. H. 552, 53 Atl. 1021, 60 L. R. R. A. 739.

This case involved the validity of the compulsory school law of New Hampshire, for a violation of which the defendant had been convicted. We quote from the opinion of the court:

"The motion to quash the complaint on the ground that the statute upon which it was founded is unconstitutional was properly denied. The statute is as follows: 'Every person having the custody and control of a child between the ages of eight and fourteen years, residing in a school district in which a public school is annually taught, shall cause such child to attend the public school all the time such school is in session, unless the child shall be excused by the school board of the district because his physical or mental condition is such as to prevent his attendance for the period required, or because he was instructed in the English language in a private school approved by the school board, for a number of weeks equal to that in which the public school was in session, in the common English branches, or, having acquired those branches, in other more advanced studies. Any person who does not comply with the requirements of this section shall be fined $10 for the first offense, and $20 for every subsequent offense.' Pub. Stat. chap. 93, sec. 14; Laws 1901, chap, 61, sec. 1. That education of the citizen is essential to the stability of the state is a proposition too plain for discussion. As a mere generalization of our own, it would command immediate and universal assent. But it rests upon a firmer foundation. The constitution declares that

knowledge and learning, generally diffused through a community' are essential to the preservation of a free government. Const. Art. 82. * * *

"Being without brief or argument from the defendant, we are not advised upon what ground he asserts the unconstitutionality of the act. Certainly, it is not unconstitutional, merely because, in obedience to the mandate of the constitution, and for 'the preservation of a free government,' it interferes in some measure with the natural right of parental dominion. 'When men enter into a state of society, they surrender up some of their natural rights to that society, in order to insure the protection of others' (Bill of Rights, Art. 3), and subject themselves to innumerable restrictions and regulations for the common good."

The court then proceeds to construe the statute as impliedly permitting a parent to keep a child out of school when the child's health required such absence. The court then proceeds to say:

"One whose child is stricken by some malady, making detention from school reasonably necessary in defense of the child's life, breaks no law of this jurisdiction by hastening for doctors and nurses instead of to the board of education. On the other hand, if he keeps his child from school merely to suit his own or his child's pleasure, or for any other reason not within the exceptions provided by the act or guaranteed by the constitution, he must suffer the penalty. Indeed, as thus limited, the law is a decided invasion of the parental domain; but, being repugnant to no provision of the constitution, and being for 'the benefit and welfare of this state, and for the governing and ordering thereof,' the citizen, in fulfillment of the social compact, must yield submission and obedience. *School Board v. Jackson*, L. R. 7 Q. B. Div. 502; *Burdick v. Babcock*, 31 Iowa, 562, 568-571; *Donahoe v Richards*, 38 Me. 379, 391, 395-397, 61 Am. Dec. 256; Schouler, Dom. Rel. 235."

It is true that the question mooted in the above case was whether or not the court could read into the statute the implication that a sick child was excused from attendance at school. The case nevertheless involved the validity of the New Hampshire statute and the court of necessity held the statute valid and applicable. The statute by its terms applied to all of the children in the state except those who were excused by the school board. There was no requirement in the statute that the school board should excuse any child and the statute therefore was on all fours with the Oregon statute in requiring attendance at the public schools.

Commonwealth v. Roberts, 159 Mass. 372, 34 N. E. 402.

The Massachusetts compulsory education law contained the following provisions:

> "* * * But, if such child has attended for a like period of time a private day school approved by the school committee of such city or town, or if such child has been otherwise instructed for a like period of time in the branches of learning required by law to be taught in the public schools, * * * such penalties shall not be incurred."

The defendant was charged with failure to send his child to the public school in accordance with the requirement of the statute. He offered to show that the child had been instructed in the branches of learning required by law to be taught in the public schools in a private day school not approved by the school committee, application for such approval having been made and refused. The court refused to admit the testimony and the defendant was convicted. In construing the statute the Massachusetts court said:

"Sending a child to a private day school approved by the school committee is enough to comply with the requirement of the law without further inquiry. Pub. St. c. 47, sec. 2, prescribes what private day schools may be so approved. But if the person having a child under his control, instead of sending him to a public school, or to a private day school approved by the school committee, prefers to have him instructed otherwise, it will be incumbent on him to show that the child has been instructed for the specified period in the required branches of learning, unless the child has already acquired them. This permits instruction in those branches in schools or academies situated in the same city or town or elsewhere, or instruction by a private tutor or governess, or by the parents themselves, provided it is given in good faith, and is sufficient in extent. If the school committee has not approved of a particular school, or has expressly refused to approve of it, then the person having control of a child, if he sends the child to that school, must take the responsibility of being able to prove that he has been sufficiently and properly instructed there. He has no such responsibility if he sends the child to a private day school approved by the school committee. The evidence which was excluded should have been admitted. Verdict set aside."

State v. Counort, 69 Wash. 321, 124 Pac. 910, 41 L. R. A. (N. S.) 95.

This case upholds the validity of the compulsory education statute of the state of Washington. The case holds that a father cannot defend a criminal prosecution by showing that he is qualified to teach his daughters and was in fact conducting a school for them in his home at the time when he was charged with failing to send them to the public school.

[illegible]

[illegible] delivered in the above-entitled cause on the 4th of June, 1923, contains the following sentence:

> "The power of the state to compel attendance at some school and to make reasonable regulations for all schools, including a requirement that they shall give instruction in English, is not questioned."

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

does not involve a direct danger to morals, decency, or of life or limb. Such legislation is not an unlawful interference with the parents' control over the child or right to its labor, nor with the liberty of the child; *People v. Ewer*, 141 N. Y. 129 (36 N. E. 4, 25 L. R. A. 794, 38 Am. St. Rep. 788), affirming *In re Ewer*, 70 Hun, 219, (24 N. Y. Supp. 560).

"2. Laws prohibiting the employment of adult males for more than a stated number of hours per day or week are not valid unless reasonably necessary to protect the public health, safety, morals or general welfare, because the right to labor or employ labor on such terms as may be agreed upon is a liberty or property right guaranteed to such persons by the Fourteenth Amendment to the Constitution of the United States and with which the state can not interfere: *Lochner v. New York*, 198 U. S. 45 (25 Sup. Ct. 539, 49 L. Ed. 937). But laws regulating the right of minors to contract do not come within this principle. They are not sui juris and can only contract to a limited extent. They are wards of the state and subject to its control. As to them, the state stands in the position of parens patriae, and may exercise unlimited supervision and control over their contracts, occupation and conduct, and the liberty and right of those who assume to deal with them. This is a power which inheres in the government for its own preservation and for the protection of the life, person, health and morals of its future citizens. * * *"

In *Stettler v. O'Hara*, 69 Or. 319, 332, it is said:

"When new conditions arise which injuriously affect the health or morals or welfare of the public, we no longer say that we will expand the police power to reach and remedy the evil. Instead, we say that a new evil has arisen which an old principle of government—the police power—will correct."

In *Gibbons v. Gibbons*, 75 Or. 500, 503, a suit involving the custody and support of minor children of divorced parents, the court said:

"1. Minor children of divorced parties remain the wards of the court which dissolved the bonds of matrimony, and, as such children were not parties to the suit, they are not bound by any decree as to the source or extent of their maintenance: *McFarlane v. McFarlane*, 43 Or. 477, 484 (75 Pac. 139). The welfare of these infants is paramount to the rights of any other person, and their support and education should be borne equally by their parents if they are able, but, if not, then by the father or mother who is financially responsible. The court granting the decree of divorce is authorized to modify it at any time so as to provide for the care, custody and support of the minors, and may impose such burden upon either or both parties to the suit: (Section 514, L. O. L.)"

In *Merges v. Merges*, 94 Or. 246, 252, it is said:

"Primarily, therefore, under our statute, the parents have equal rights to the custody of their children. Where this is in dispute it is universally conceded that the controlling consideration, paramount above all others, is the welfare of the child. It is not a chattel like pigs, chickens or furniture, to be divided between the divorce litigants on the basis of monetary value; neither is its custody to be made the vehicle for a continuation of their antagonisms and resentments toward each other. It is a matter of almost tragic regret that parents should break up their home by their bickerings and deprive their child of that nurture and admonition that congenial parents can give. But such things happen, and out of the wreck the courts must do the best possible under the circumstances for the welfare of the offspring. The preferences of the parents, whether founded in spite or in real affection, must yield to the best interests of the child. The authorities are practically unanimous on this subject. The principle is conceded in the argument and it is not necessary to note precedents in support of this conclusion."

State v. Bailey, 157 Ind. 324, 59 L. R. A. 435, involved a question of the validity of a compulsory education law which was assailed upon the ground that it invaded the natural right of a man to govern and control his own children. At page 437 of the report in L. R. A. the court said:

> "The next question presented is whether the statute is an unauthorized invasion of the natural rights of the appellee as a parent. The natural rights of a parent to the custody and control of his infant child are subordinate to the power of the state, and may be restricted and regulated by municipal laws. One of the most important natural duties of the parent is his obligation to educate his child, and this duty he owes, not to the child only, but to the commonwealth. If he neglects to perform it, or wilfully refuses to do so, he may be coerced by law to execute such civil obligation. The welfare of the child and the best interests of society require that the state shall exert its sovereign authority to secure to the child the opportunity to acquire an education. Statutes making it compulsory upon the parent, guardian, or other person having the custody and control of children to send them to public or private schools for longer or shorter periods during certain years of the life of such children have not only been upheld as strictly within the constitutional power of the legislature, but have generally been regarded as necessary to carry out the express purposes of the Constitution itself. Ind. Const. art. 8, secs. 1-8; *Hochheimer, Custody of Infants*, sec. 79; Fraser, Parent & Child, 77; *Bennet v. Bennet*, 13 N. J. Eq. 114; *English v. English*, 32 N. J. Eq. 738; *Re Bort*, 25 Kan. 308, 37 Am. Rep. 255; *People v. Ewer*, 141 N. Y. 129, 25 L. R. A. 794, 36 N. E. 4; *Sheers v. Stein*, 75 Wis. 44, 5 L. R. A. 781, 43 N. W. 728; *Lally v. Fitz Henry*, 85 Iowa, 49, 16 L. R. A. 681, 51 N. W. 1155. 'The matter of education is deemed a legitimate function of the state, and, with us, is imposed upon the legislature as a duty by imperative provisions

of the Constitution. . . . The subject has always been regarded as within the purview of legislative authority. How far this interference should extend is a question, not of constitutional power for the courts, but of expediency and propriety, which it is the sole province of the legislature to determine. The judiciary has no authority to interfere with this exercise of legislative judgment, and to do so would be to invade the province which by the constitution is assigned exclusively to the lawmaking power.' *State v. Clottu,* 33 Ind. 409, 411. To carry out the enlightened and comprehensive system of education enjoined by the Constitution of this state, a vast fund, dedicated exclusively to this purpose, has been set apart. Revenues to the amount of more than $2,000,000 annually are distributed among the school corporations of the state. No parent can be said to have the right to deprive his child of the advantages so provided, and to defeat the purposes of such munificent appropriations."

In *People v. Ewer,* 141 N. Y. 129, 36 N. E. 4, 25 L. R. A. 794, the constitutionality of a statute prohibiting the employment or exhibition of girls under 14 years of age as dancers or in theatrical exhibitions was involved. The court, by Mr. Justice Gray, said (page 797 in 25 L. R. A.):

"The proposition is indisputable that the custody of the child by the parent is within legislative regulation. The parent, by natural law, is entitled to the custody and care of the child, and as its natural guardian, is held to the performance of certain duties. To society, organized as a state, it is a matter of paramount interest that the child shall be cared for, and that the duties of support and education be performed by the parent or guardian, in order that the child shall become a healthful and useful member of the community. It has been well remarked that the better organized and trained the race the better it is prepared for holding its own. Hence it is that laws are enacted looking to the compulsory

education by parents of their children, and to their punishment for cruel treatment; and which limit and regulate the employment of children in the factory and the workshop to prevent injury from excessive labor. It is not, and can not be disputed, that the interest which the state has in the physical, moral, and intellectual well-being of its members warrants the implication and the exercise of every just power which will result in preparing the child in future life to support itself, to serve the state, and in all the relations and duties of adult life to perform well and capably its part."

The statute in nowise interferes with the custody of children. No parent who is now entitled to the custody of his children will lose such custody under the operations of this statute. The statute in nowise prevents a parent from instructing his children in any subject whatsoever. It has no direct reference or application to the operation of appellee's school . Appellee may still operate its school. During the entire school day it may instruct children under eight years of age and over 16 years of age. It may board children between these ages and, after they have attended public school during the hours at which such attendance is compulsory, appellee may exercise its control over these children in any proper way.

CONCLUSION

The growth of the public school system has been gradual. During the early history of the country, owing to sparse population in many localities and the poverty of the settlers, public schools for all could not be maintained, and, as a matter of necessity, parents were left to provide for the education of their children as best they could. Consequently many children grew up without even the rudiments of an education. Some were educated, at least to some extent, by parents, and the education of others was provided for by private schools.

The necessity for any other kind of school than that provided by the state has ceased to exist. The public school is everywhere recognized as being an institution vital to the welfare of the individual citizen, and to that of the state and nation. The state, at great expense, has provided everything in the line of facilities for the education of youth in the public schools that experience has indicated to be to their best interests. To that end, institutions devoted exclusively to the instruction and training of teachers have been founded and are being maintained. Such institutions are conducted by specialists in matters pertaining to the education of the young, and, as a result, the methods of instruction and means of promoting the health and education of the children in the public schools have been greatly improved in recent years. Our public school buildings, as now constructed, represent the result of experience and great expense in providing for the physical and intellectual welfare of the children who are trained therein.

The welfare of minor children is a matter in which the state is interested to such an extent that it has asserted the right to take a babe from its mother's arms

and deprive her of its custody, training and society, if it is apparent that the welfare of the child or of the public requires such action.

No attempt has been made on the part of appellee to show that the training received by children who attend its schools is superior to that which they would receive in the public schools, and no such condition or result could be shown. Comparison of private schools with those maintained by the state will not reveal a degree of superiority of the former which justifies a demand to be permitted to continue same as a right guaranteed by the Constitution.

Appellee demands, as a right guaranteed under the Constitution of the United States, the right to conduct an institution for the instruction of children of common school age in opposition to the public schools maintained by the state, in order that it may therein give military training which is no part of the training in public schools and would not be permitted therein.

If a few such institutions can lawfully be maintained, the number which may ultimately be so maintained can not consistently be limited, and if this court should hold that the state does not have the right to require all children within its borders to be educated in its public schools, such institutions may, without constitutional restriction, develop a syqstem of educational training which will result in doing away with public schools.

Appellee places great reliance upon the recent case of *Meyer v. Nebraska* (262 U. S. 390, 67 L. Ed. 1042), and its companion cases. We quote from the opinion of Mr. Justice McReynolds in that case as follows:

> "The problem for our determination is whether the statute, as construed and applied, unreasonably infringes the liberty guaranteed to the plaintiff in error by the fourteenth amendment. 'No state * * * shall deprive any person of life, liberty or property without due process of law.'
>
> "While this court has not attempted to define with exactness the liberty thus guaranteed, the term has received much consideration, and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint, but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and, generally, to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men. *Slaughter House Cases*, 16 Wall. 36, 21 L. Ed. 394; *Butchers' Union S. H. & L. S. L. Co. v. Crescent City L. S. L. & S. H. Co.* 111 U. S. 746, 28 L. ed. 585, 4 Sup. Ct. Rep. 652; *Yick Wo v. Hopkins*, 118 U. S. 356, 30 L. ed. 220, 6 Sup. Ct. Rep. 1064; *Minnesota v. Barber*, 136 U. S. 313, 34 L. ed. 455, 3 Inters. Com. Rep. 185, 10 Sup. Ct. Rep. 862; *Allgeyer v. Louisiana*, 165 U. S. 578, 41 L. ed. 832, 17 Sup. Ct. Rep. 427; *Lochner v. New York*, 198 U. S. 45, 49 L. ed. 937, 25 Sup. Ct. Rep. 539, 3 Ann. Cas. 1133; *Twining v. New Jersey*, 211 U. S. 78, 53 L. ed. 97, 29 Sup. Ct. Rep. 14; *Chicago, B. & Q. R. Co. v. McGuire*, 219 U. S. 549, 55 L. ed. 328, 31 Sup. Ct. Rep. 259; *Truax v. Raich*, 239 U. S. 33, L. ed. 131, L. R. A. 1916D, 545, 36 Sup. Ct. Rep. 7, Ann. Cas. 1917B, 283; *Adams v. Tanner*, 244 U. S. 590, 61 L. ed.

1336, L. R. A. 1917F, 1163, 37 Sup. Ct. Rep. 662, Ann. Cas. 1917D, 973; *New York L. Ins. Co. v. Dodge*, 246 U. S. 357, 62 L. ed. 772, 38 Sup. Ct. Rep. 337, Ann. Cas. 1918F, 593; *Truax v. Corrigan*, 257 U. S. 312, 66 L. ed. 254, 27 A. L. R. 375, 42 Sup. Ct. Rep. 124; *Adkins v. Children's Hospital* (April 9, 1923) 261 U. S. 525, ante, 785, 24 A. L. R. 1238, 43 Sup. Ct. Rep. 394; *Wyeth v. Board of Health* (Wyeth v. Thomas), 200 Mass. 474, 23 L. R. A. (N. S.) 147, 128 Am. St. Rep. 439, 86 N. E. 925. The established doctrine is that this liberty may not be interfered with, under the guise of protecting the public interest, by legislative action which is arbitrary or without reasonable relation to some purpose within the competency of the state to effect. Determination by the legislature of what constitutes proper exercise of police power is not final or conclusive, but is subject to supervision by the courts. *Lawton v. Steele*, 152 U. S. 133, 137, 38 L. ed. 385, 388, 14 Sup. Ct. Rep. 499.

"The American people have always regarded education and acquisition of knowledge as matters of supreme importance, which should be diligently promoted. The Ordinance of 1787 declares: 'Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.' Corresponding to the right of control, it is the natural duty of the parent to give his children education suitable to their station in life; and nearly all the states, including Nebraska, enforce this obligation by compulsory laws.

"Practically, education of the young is only possible in schools conducted by especially qualified persons who devote themselves thereto. The calling always has been regarded as useful and honorable—essential, indeed, to the public welfare. Mere knowledge of the German language can not reasonably be regarded as harmful. Heretofore it has been commonly looked upon as helpful and desirable. Plaintiff in error taught this language in school as part of his occupation. His right thus to

teach and the right of parents to engage him so to instruct their children, we think, are within the liberty of the amendment.

"The challenged statute forbids the teaching in school of any subject except in English; also the teaching of any other language until the pupil has attained and successfully passed the eighth grade, which is not usually accomplished before the age of twelve. The supreme court of the state has held that 'the so-called ancient or dead languages' are not 'within the spirit or the purpose of the act.' *Nebraska Dist. v. McKelvie,* 108 Neb. 448, 187 N. W. 927 (April 19, 1922). Latin, Greek, Hebrew are not proscribed; but German, French, Spanish, Italian, and every other alien speech are within the ban. Evidently the legislature has attempted materially to interfere with the calling of modern language teachers, with the opportunities of pupils to acquire knowledge, and with the power of parents to control the education of their own."

This appellant submits that, when given its broadest interpretation, the said decision does not apply to the situation presented by the instant case.

As we understand the case of *Meyer v. Nebraska, supra,* it involved the right of an individual to engage in the occupation of teaching and the right of parents and children to have their children receive instruction in German in a parochial school which was conducted pursuant to statute. We understand the effect of that decision to be that there did not appear to be any such immediate demand for the discontinuance of such instruction, to the deprivation of the right of the teacher to engage in his profession and of the liberty of the parents and children to demand instruction in the German language, as to warrant such legislation. The gist of the opinion appears to us to be contained in the following excerpt therefrom (page 1046 of Report of 67 L. Ed.):

"The power of the state to compel attendance at some school and to make reasonable regulations for all schools, including a requirement that they shall give instructions in English, is not questioned. Nor has challenge been made of the state's power to prescribe a curriculum for institutions which it supports. Those matters are not within the present controversy. Our concern is with the prohibition approved by the supreme court. *Adams v. Tanner*, 244 U. S. p. 594, 61 L. ed. 1342, L. R. A. 1917 F, 1163, 37 Sup. Ct. Rep. 662, Ann. Cas. 1917D, 973, pointed out that mere abuse incident to an occupation ordinarily useful is not enough to justify its abolition, although regulation may be entirely proper. No emergency has arisen which renders knowledge by a child of some language other than English so clearly harmful as to justify its inhibition, with the consequent infringement of rights long freely enjoyed. We are constrained to conclude that the statute as applied is arbitrary and without reasonable relation to any end within the competency of the state.

"As the statute undertakes to interfere only with teaching which involves a modern language, leaving complete freedom as to other matters, there seems no adequate foundation for the suggestion that the purpose was to protect the child's health by limiting his mental activities. It is well known that proficiency in a foreign language seldom comes to one not instructed at an early age, and experience shows that this is not injurious to the health, morals, or understanding of the ordinary child."

In this connection we beg leave to call to the court's attention the following excerpt from the dissenting opinion of Mr. Justice Holmes in the case of *Truax v. Corrigan*, 257 U. S. 312, Sup. Ct. Rep. 312, 376, 66 L. Ed. 254, 268:

"I must add one general consideration. There is nothing that I more deprecate than the use of the fourteenth amendment beyond the absolute compulsion of its

words to prevent the making of social experiments that an important part of the community desires, in the insulated chambers afforded by the several states, even though the experiments may seem futile or even noxious to me and to those whose judgment I most respect. * * *"

The case of *Adams v. Tanner*, 244 U. S. 590, 61 L. Ed. 1336, is urged by appellee as being conclusive of the questions involved in the instant case.

As we understand that case, it involved the right of a citizen of the United States to engage in a useful and usual occupation. The statute involved was held by the court to be prohibitory, rather than regulatory, and we understand the court to have held (page 1343 Rep. in 61 L. Ed.):

> " 'The fourteenth amendment protects the citizen in his right to engage in any lawful business, but it does not prevent legislation intended to regulate useful occupations which, because of their nature or location may prove injurious or offensive to the public. Neither does it prevent a municipality from prohibiting any business which is inherently vicious and harmful. But, between the useful business which may be regulated and the vicious business which can be prohibited lie many non-useful occupations which may, or may not, be harmful to the public, according to local conditions, or the manner in which they are conducted.' *Murphy v. California*, 225 U. S. 623, 628, 56 L. ed. 1229, 1232, 41 L. R. A. (N. S.) 153, 32 Sup. Ct. Rep. 697."

We submit that the said case presents a question quite distinct from one involving the right of a state to require that all children between the ages of eight and sixteen years attend schools which are provided and maintained by the state as a part of its governmental functions, and the personal right or liberty of parents to have

their children attend a private school, when it does not appear that the training received by the children in such private schools is superior in any way to that which they would receive in public schools, and when it does appear that the liberty claimed to be denied by such a law is liberty to give military instruction in connection with common school training; a thing which no one would have the temerity to demand as part of the course of instruction in the public schools.

Truax v. Raich, 239 U. S. 33, 36 Sup. Ct. Rep. 7, 60 L. Ed. 131, L. R. A. 1916D, 545 Ann. Cas. 1917B, 243. In that case it was held (page 134, Report in L. Ed.):

"* * * Being lawfully an inhabitant of Arizona, the complainant is entitled under the fourteenth amendment to the equal protection of its laws. The description, 'any person within its jurisdiction', as it has frequently been held, includes aliens. * * *"

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"It is sought to justify this act as an exercise of the power of the state to make reasonable classifications in legislating to promote the health, safety, morals, and welfare of those within its jurisdiction. But this admitted authority, with the broad range of legislative discretion that it implies, does not go so far as to make it possible for the state to deny to lawful inhabitants, because of their race or nationality, the ordinary means of earning a livelihood. It requires no argument to show that the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the amendment to secure.

* * * * * * *

once appears. If the state is at liberty to treat the employment of aliens as in itself a peril, requiring restraint regardless of kind or class of work, it can not be denied that the authority exists to make its measures to that end effective. *Otis v. Parker*, 187 U. S. 606, 47 L. ed. 323, 23 Sup. Ct. Rep. 168; *New York ex rel. Silz v. Hesterberg*, 211 U. S. 31, 53 L. ed. 75, 29 Sup. Ct. Rep. 10; *Purity Extract & Tonic Co. v. Lynch*, 226 U. S. 192, 57 L. ed. 184, 33 Sup. Ct. Rep. 44. If the restriction to 20 per cent now imposed is maintainable, the state undoubtedly has the power, if it sees fit, to make the percentage less. We have nothing before us to justify the limitation to 20 per cent save the judgment expressed in the enactment, and if that is sufficient, it is difficult to see why the apprehension and conviction thus evidenced would not be sufficient were the restriction extended so as to permit only 10 per cent of the employes to be aliens, or even a less percentage; or were it made applicable to all businesses in which more than three workers were employed instead of applying to those employing more than five. We have frequently said that the legislature may recognize degrees of evil and adapt its legislation accordingly (*Consolidated Coal C. v. Illinois*, 185 U. S. 203, 207, 46 L. ed. 872, 22 Sup. Ct. Rep. 616; *McLean v. Arkansas*, 211 U. S. 539, 551, 53 L. ed. 315, 321, 29 Sup. Ct. Rep. 206; *Miller v. Wilson*, 236 U. S. 373, 384, 59 L. ed. 628, 632, 35 Sup. Ct. Rep. 342); but underlying the classification is the authority to deal with that at which the legislation is aimed. The restriction now sought to be sustained is such as to suggest no limit to the state's power of excluding aliens from employment if the principle underlying the prohibition of the act is conceded. No special public interest with respect to any particular business is shown that could possibly be deemed to support the enactment, for, as we have said, it relates to every sort. The discrimination is against aliens as such in competition with citizens in the described range of enterprises, and in our opinion it clearly falls under the condemnation of the fundamental law."

For reasons heretofore stated in connection with argument regarding the effect of the decision of this court in the cases of *Meyer v. Nebraska, supra,* and *Adams v. Tanner, supra,* we submit that the decision in the case of *Truax v. Raich* is not controlling as to the issues involved in the instant case.

Terrace v. Thompson, Advance, Sheet No. 3, p. 35, U. S. Supreme Court Advance Opinions, December 1, 1923. This case presents a question involving the rights of aliens and upholds a statute denying to them the right to own or control agricultural land, as constituting a reasonable exercise of the police power, pursuant to a federal law withholding from certain aliens, whose rights were involved, the privilege of naturalization. It distinguishes the rights of such aliens from the rights of aliens involved in the case of *Truax v. Raich, supra.* We refer to this case because it contains a recent expression of this court regarding the police powers of the states in matters of public policy.

Appellant again invites the attention of the court to the rule stated in *Powell v. Pennsylvania,* 127 U. S. 678, 32 L. Ed. 253, 256-257, and other cases involving the validity of statutes enacted in the exercise of the police power for the purpose of meeting conditions which the legislature deemed it advisable to correct, and in enacting which the legislature is presumed to have investigated the questions of fact upon which its conclusion that such legislation was required were based, that the legislature is the exclusive judge of the necessity for such legislation and that where the question presented to the court involves the determination of matters of fact this court will not investigate such questions or pass upon the necessity for such legislation.

In this case it is to be presumed that the legislature and the people of the state investigated the question of the necessity for such legislation and found and determined, as a question of fact, that the instruction given to children of the ages affected by the amendment in the public schools of the state was better and more complete than that provided by private institutions; that facilities for protecting the health of such children when in school were better provided for in the public schools than in private institutions, and that every other fact upon which such legislation might properly be based, was inquired into by them and found to require such legislation. In that respect the case differs materially from that of *Meyer v. Nebraska, supra,* where the court was enabled to take judicial notice of the fact that the mere teaching of the German language did not in and of itself have such an effect as to warrant an exercise of the police power denying to one, who depended upon the giving of such instruction as a means of livelihood, the right to teach that language, or such effect as to warrant depriving parents of their right to have their children so instructed.

Respectfully submitted,

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WILLIS S. MOORE,
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FEB 24

Supreme Court of the United States

OCTOBER TERM, 1924

No. 583.

WALTER M. PIERCE, as Governor of the State of Oregon; ISAAC H. VAN WINKLE, as Attorney-General of the State of Oregon; and STANLEY MYERS, as District Attorney for Multnomah County, State of Oregon,
Appellants,
vs.
THE SOCIETY OF THE SISTERS OF THE HOLY NAMES OF JESUS AND MARY,
Appellee.

No. 584.

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Appellants,
vs.
HILL MILITARY ACADEMY,
Appellee.

Appeals from the District Court of the United States for the District of Oregon

Supplement to Briefs of Appellants, Isaac H. Van Winkle

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Supplement to Briefs of Appellant, Isaac H. Van Winkle

In *Meyer v. Nebraska*, 262 U. S. 390, 67 L. Ed. 1042, this court said:

"The American people have always regarded education and acquisition of knowledge as matters of supreme importance, which should be diligently promoted. * * *

"Practically, education of the young is only possible in schools conducted by especially qualified persons who devote themselves thereto. The calling always has been regarded as useful and honorable—essential, indeed, to the public welfare. * * * The power of the state to compel attendance at some school and to make reasonable regulations for all schools, including a requirement that they shall give instructions in English, is not questioned. Nor has challenge been made of the state's power to prescribe a curriculum for institutions which it supports. Those matters are not within the present controversy. * * *

"The established doctrine is that this liberty (that guaranteed by the 14th Amendment) may not be interfered with, under the guise of protecting the business interest, by legislative action which is arbitrary or without reasonable relation to some purpose within the competency of the state to effect. Determination by the legislature of what constitutes proper exercise of police power is not final or conclusive, but is subject to supervision by the courts. *Lawton v. Steele,* 152 U. S. 133, 137, 38 L. Ed. 385, 388, 14 Sup. Ct. Rep. 499."

In *Truax v. Raich,* 239 U. S. 60, L. Ed. 131, 136, this court said:

"If the state is at liberty to treat the employment of aliens as in itself a peril, requiring restraint regardless of kind or class of work, it can not be denied that the authority exists to make its measures to that end effective. *Otis v. Parker,* 187 U. S. 606, 47 L. Ed. 323, 23 Sup. Ct. Rep. 168; *New York ex rel. Silz v. Hesterberg,* 211 U. S. 31, 53 L. Ed. 75, 29 Sup. Ct. Rep. 10; *Purity Extract & Tonic Co. v. Lynch,* 226 U. S. 192, 57 L. Ed. 184, 33 Sup. Ct. Rep. 44."

Since it appears that application of the principles announced in the above excerpts will determine the matters involved in the instant case, this appellant respectively solicits consideration by the court of a further principle; which, in the hurry of preparation of his principal briefs, did not, perhaps, receive the consideration which its importance should command.

There can be no doubt that if the state has the power to require the education of all children within its bounds, it has the right to adopt such regulations as will make this education effective. It has the right to assure that the education shall be thorough and that it shall adequately cover the branches deemed by the legislature to constitute a minimum of education.

All presumptions favor the constitutionality of the statute. If there is any state of facts which could exist which would justify the statute, the presumption will be indulged that this state of facts does exist. The presumption in this case would, therefore, be that it is impracticable to supervise the instruction given in the private and parochial schools so as to assure that children attending these schools will secure a thorough education up to the minimum prescribed by the legislature. In the case of the Society of the Sisters of the Holy Names of Jesus and Mary it is alleged that this particular school is giving this minimum of instruction in a proper way, but it is nowhere alleged that all of the private schools operating within the state of Oregon are so doing.

It being conceded that the state has power to compel attendance at some school, it follows, under familiar principles, that the legislature has a broad discretion in the selection of a means by which the results desired may be brought about.

"It is a settled principle of constitutional law that the government which has a right to do an act, and has imposed upon it the duty of performing that act, must, according to the dictates of reason, be allowed to select the means."

6 R. C. L. 137;
Slaughter House Cases, 16 Wall. 36, 21 L. Ed. 394, 405.

"Congress must possess the choice of means, and must be empowered to use any means which are, in fact, conducive to the exercise of a power granted by the constitution."

U. S. v. Fisher, 2 Cranch. 358, 396, 2 L. Ed. 304, 317.

"The government which has the right to do an act, and has imposed on it the duty of performing that act, must, according to the dictates of reason, be allowed to select the means; and those who contend that it may not select any appropriate means, that one particular mode of accepting the object is excepted, take upon themselves the burden of establishing that exception.

* * * * *

"* * * Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional."

McCulloch v. Maryland, 4 Wheat. 316, 421, 4 L. Ed. 579, 605.

"* * * But in determining whether the legislature, in a particular enactment, has passed the limits of its constitutional authority, every reasonable presumption must be indulged in favor of the validity of such enactment. It must be regarded as valid, unless it can be clearly shown to be in conflict with the constitution. It is a well-settled rule of constitutional exposition, that if a statute may or may not be, according to circumstances, within the limits of legislative authority, the existence of the circumstances necessary to support it must be presumed."

Sweet v. Rechel, 159 U. S. 380, 393, 40 L. Ed. 188, 194.

Home Telephone Co. v. Los Angeles, 211 U. S. 265, 281, 53 L. Ed. 176, 186, 6 R. C. L. 102.

"When the constitution is silent, and the question is one of public policy, or relates to the best means or agency for the attainment of some governmental end, it must be presumed that the framers of the constitution intended to invest the legislative body with a large discretion in the selection of the agencies most suitable and beneficial to the public."

Overshiner v. State, 156 Ind. 187, 59 N. E. 468, 51 L. R. A. 748, 749, 750.

"It is also a maxim of constitutional law that a legislature is presumed to have acted within constitutional limits, upon full knowledge of the facts, and with the purpose of promoting the interests of people as a whole, and the courts will not lightly hold that an act passed by the legislature was one in the enacting of which it has transcended its power. * * *"

Atchison, Topeka & Santa Fe R. Co. v. Matthews, 174 U. S. 96, 19 S. C. R. 609, 43 L. Ed. 909, 913.

"* * * Subject to limitations the legislature of the state is authorized to pass measures for the protection of the people of the state in the exercise of the police power, and is itself the judge of the necessity or expediency of the means adopted."

New York ex rel. Silz v. Hesterberg, 211 U. S. 31, 53 L. Ed. 75, 79.

"The question in each case is whether the legislature has adopted the statute in the exercise of a reasonable discretion, or whether its action be a mere excuse for an unjust discrimination, or the operation or spoilation of a particular class."

Holden v. Hardy, 169 U. S. 366, 42 L. Ed. 780, 793.

In reliance upon the foregoing authorities, we contend that it is within the legislative power of the state to adopt such means as will assure that every child within the state when he reaches maturity will have the minimum education essential to the proper discharge by him of the duties of citizenship. It is competent for the legislative power to determine whether or not this result can be obtained under a system which prescribes regulations for the operation of private schools. There is certainly room for some difference of opinion on this latter subject. It can not be said that the legislative branch of the government is acting arbitrarily and without any possible excuse if it reaches the conclusion that the proper supervision of private schools is impracticable under the conditions which obtain in Oregon. Human nature being what it is, and political conditions being what they are, there is room for the exercise of the

opinion that in certain counties, the county school superintendent will be superficial and ineffective in supervising the course of instruction in schools which are under control of others than the public authorities. The presumption is that the people of Oregon in enacting the statute, which is in question at this hearing, so believed.

This court will certainly not presume that in enacting the law under consideration the legislature of the state of Oregon and the people of that state, under the initiative, acted in an arbitrary and unreasonable manner and that the object of the said act was the spoilation of a particular class.

If the control of the education of children is within the police power of the state it is certainly competent for the state to select the means which seem to it most appropriate. It is to be assumed, and there is no evidence to the contrary, that before enacting this law the people took into consideration the relative degree of efficiency of private and parochial schools and the public schools, and determined that it was advisable and necessary for the promotion of the public welfare that all children within the class affected by the act be afforded the superior advantages of the common school system maintained by the state, and that the law was enacted as the result of careful and honest consideration of its effect upon the public welfare. This involves a matter of legislative judgment and discretion, and necessarily a comparison of methods used by such institutions. The courts can not make this comparison, weigh the feasibility and practicability of each and substitute their judgment and discretion for that of the legislature whose determination of the question they are called upon to review.

Knobloch v. Chicago, M. & St. P. R. Co., 31 Minn. 402, 18 N. W. 106;

Nelson v. Minneapolis, 112 Minn. 16, 127 N. W. 445, 29 L. R. A. (N. S.) 260;

St. Louis v. Liessing, 190 Mo. 464, 1 L. R. A. (U. S.) 918, 4 Ann. Cas. 112, 116.

The efficiency of the training afforded by private and parochial schools in the state of Oregon is a matter peculiarly within the knowledge of the people of that state, and concerning which the court does not have judicial knowledge.

Since the training of children in the common schools is a matter of supreme importance to the people of Oregon, they should be permitted to exercise their discretion as to the best means of promoting the general welfare in that regard.

Respectfully submitted,

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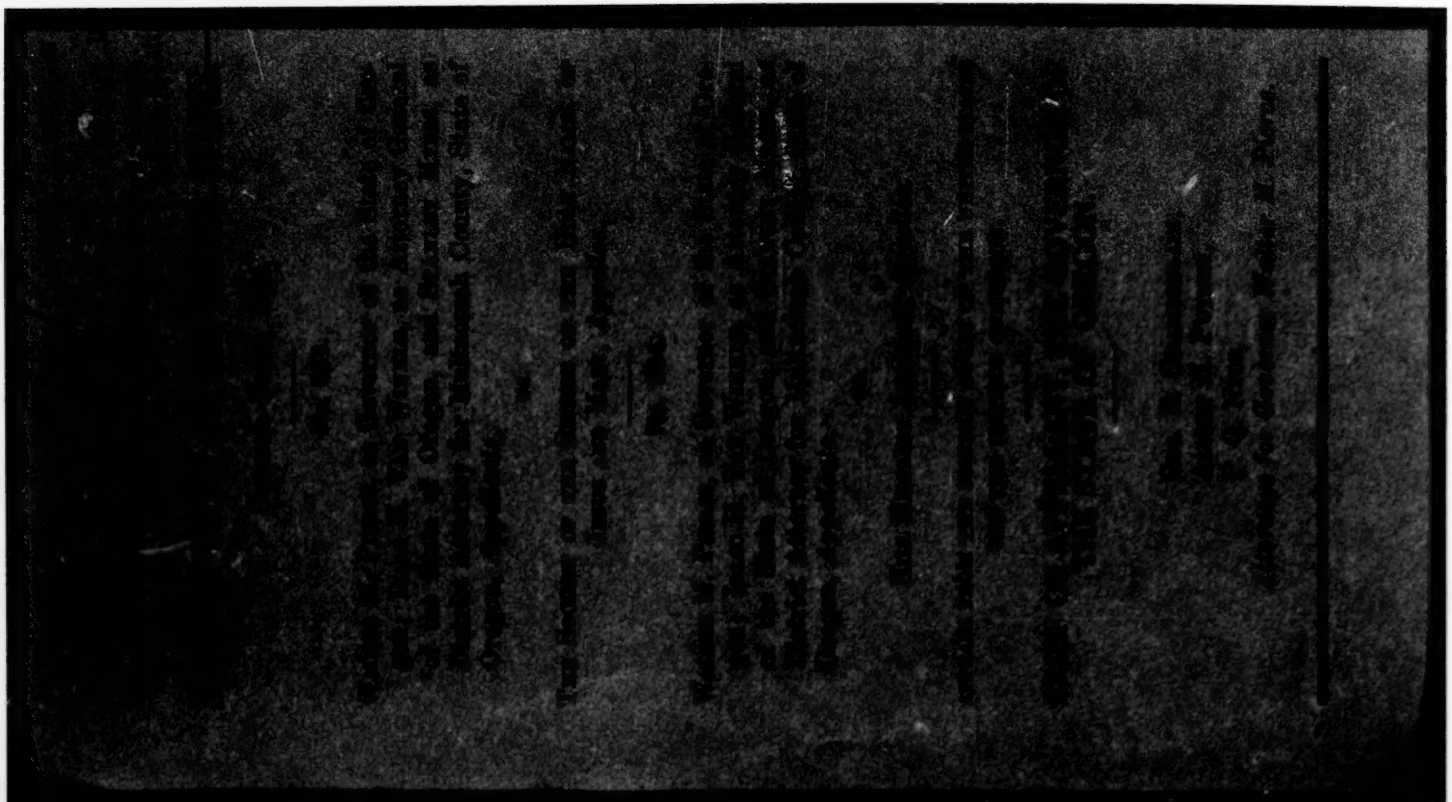

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1924.

No. 583.

WALTER M. PIERCE, as Governor of the State of Oregon; ISAAC H. VAN WINKLE, as Attorney General of the State of Oregon, and STANLEY MYERS, as District Attorney for Multnomah County, State of Oregon, *Appellants,*

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vs.

HILL MILITARY ACADEMY, *Appellee.*

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON.

BRIEF OF APPELLANT, THE GOVERNOR OF THE STATE OF OREGON.

STATEMENT.

These cases arise out of an Act, proposed by Initiative Petition, and adopted at an election held in the State of Oregon, on November 7, 1922, by a majority

of the votes cast by legal voters upon the question of its adoption.

The purpose of this Act was to amend and extend the application of the compulsory feature of Section 5259, of the Oregon Laws, relative to compulsory education.

The text of this Act, in words and figures, was as follows:

> "A Bill for an Act to Propose by Initiative Petition to Amend Section 5259, Oregon Laws, Compulsory Education.
>
> "Be it enacted by the People of the State of Oregon:
>
> "Section 1. That Section 5259, Oregon Laws be, and the same is hereby, amended so as to read as follows:
>
> "Section 5259. Children Between the Ages of Eight and Sixteen Years. Any parent, guardian, or other person in the State of Oregon, having control or charge or custody of a child under the age of sixteen years and of the age of eight years or over at the commencement of a term of public school of the district in which said child resides, who shall fail or neglect or refuse to send such child to a public school for the period of time a public school shall be held during the current year in said district, shall be guilty of a misdemeanor and each day's failure to send such child to a public school shall constitute a separate offense. Provided, that in the following cases, children shall not be required to attend public schools.
>
> "(a) Children Physically Unable. Any child who is abnormal, subnormal, or physically unable to attend school.
>
> "(b) Children who have completed the Eighth Grade. Any child who has completed the eighth grade, in accordance with the provisions of the state course of study.

"(c) Distance from school. Children between the ages of eight and ten years inclusive, whose place of residence is more than one and one-half miles, and children over ten years of age whose place of residence is more than three miles, by the nearest traveled road from a public school; provided, however, that if transportation to and from school is furnished by the school district, this exemption shall not apply.

"(d) Private Instruction. Any child who is being taught for a like period of time by the parent or private teacher such subjects as are usually taught in the first eight years in the public school, but before such child can be taught by a parent or private teacher, such parent or private teacher must receive written permission from the county superintendent, and such permission shall not extend longer than the end of the current school year. Such child must report to the county school superintendent or some person designated by him at least once every three months and take an examination in the work covered. If, after such examination the county superintendent shall determine that such child is not being properly taught, then the county superintendent shall order the parent, guardian, or other person, to send such child to the public school the remainder of the school year.

"If any parent, guardian or other person having control or charge or custody of any child between the age of eight and sixteen years, shall fail to comply with any provision of this section, he shall be guilty of a misdemeanor, and shall, on conviction thereof, be subject to a fine of not less than $5.00, nor more than $100, or to imprisonment in the county jail not less than two nor more than thirty days or by both such fine and imprisonment in the discretion of the court.

"This Act shall take effect and be and remain in force from and after the first day of September, 1926."

Shortly after the adoption of this Act, and before the time at which it was to go into effect, the defendants in error brought bills of complaint, in the United States District Court for the District of Oregon against the plaintiffs in error, in their capacity as officials of the State of Oregon, seeking to restrain them from threatening or attempting to enforce the said Act.

In their bill the defendants in error charged that the Act violated the provision of the United States Constitution against the impairment of the obligation of contracts by the State, and also violated the various rights protected by the first section of the Fourteenth Amendment to the Constitution of the United States.

In the District Court the Judges held that the Oregon Act deprived the defendants in error of their property without due process of law, and granted a preliminary injunction restraining the plaintiffs in error "from threatening or attempting to enforce the act complained against."

From this decision the plaintiffs in error have taken an appeal to the Supreme Court of the United States.

The question in issue is whether the new Oregon School Law is in violation of any of the provisions of the Federal Constitution.

ASSIGNMENTS OF ERROR.

The appellants assign for error:

I

That the court erred in enjoining the enforcement of the statute enacted by the electors of Oregon under

the initiative on the 7th day of November, 1922, and set forth at large in the seventh paragraph of the amended bill of complaint, which statute is also set forth as chapter one of the General Laws of Oregon for the year 1923 in the compilation of the said General Laws of Oregon officially published by the State of Oregon.

II

The court erred in holding the statute set forth at large in the seventh paragraph of plaintiff's amended bill of complaint, which statute is also described as chapter 1 of the General Laws of Oregon for the year 1923 as violative of the constitutional rights of plaintiff.

III

The court erred in holding that the statute set forth at large in the seventh paragraph of the amended bill of complaint of plaintiff and published as chapter one of the General Laws of Oregon for the year 1923 is unconstitutional and void.

IV

The court erred in holding that plaintiff is in a position to raise the legal questions relied upon by it and determined in its favor by the above entitled court on the 31st of March, 1924.

V

The court erred in failing to sustain the motion of defendants to dismiss plaintiff's amended bill of complaint.

VI

The court erred in failing to hold that plaintiff's suit is prematurely brought and that the injunction prayed for by plaintiff should for this reason be denied.

VII

The court erred in passing an injunction order as against the defendant, Walter M. Pierce, as Governor of Oregon.

VIII

The court erred in passing an injunction order as against the defendant, Isaac H. Van Winkle, as Attorney General of Oregon.

IX

The court erred in passing an injunction order against the defendant, Stanley Myers, as District Attorney for Multnomah County, Oregon.

X

The court erred in restraining the expression and publication of the opinions of the defendants as to the constitutionality of the statute adopted under the initiative by the people of Oregon on the 7th of November, 1922, and published as chapter one of the General Laws of Oregon for 1923.

XI

The court erred in passing an injunctive order which fails to specify the acts on the part of defendants which are enjoined except only the expression and publication of the opinions of defendants set forth in the ninth assignment of error.

XII

The court erred in passing an injunctive order vague and uncertain as to the acts undertaken to be restrained and enjoined.

XIII

The court erred in holding that the statute so adopted under the initiative on the 7th day of November, 1922, and set forth at large in the seventh paragraph of the amended bill of complaint which statute is also published as chapter one of the General Laws of Oregon for the year 1923 in the official compilation of the said laws, is in conflict with the Constitution of the United States and particularly with the Fourteenth Amendment thereto.

ARGUMENT.

The assignments of error raise the question as to the constitutionality of the Act involved, and while in the argument we will discuss the points relied upon by the defendants in error, we do not undertake to follow the order in which the assignments of error are made.

The two cases involve almost exactly the same questions and the determination of one is decisive of the other and hence are covered by one brief.

The Power of the Federal Courts to Declare State Laws Unconstitutional.

Of all the powers possessed by the Federal Government, or any of its departments, the one which should be exercised with the greatest caution is the power of the Federal courts to declare state laws to be in violation of the Federal Constitution and therefore void.

Throughout all the time that has elapsed since the adoption of the Constitution, there have been, and are at the present time, two distinct governments within the territorial limits of each state of the United States.

Each of these governments has its own laws, and each has its tribunals for their enforcement. Neither government has the right to encroach upon the proper jurisdiction of the other. The United States Government is entirely the creation of the Constitution, it is a government of delegated powers, possessing no authority not granted to it, either expressly or by implication, by the Constitution.

While it is true, in accordance with the sixth article of the Constitution that, within their proper field, the Constitution, laws, and treaties of the United States are the supreme law of the land, it is equally true, not only in accordance with the express provision of the Tenth Amendment but also in accordance with the general spirit of the whole Constitution, that the Federal Government has no power to interfere with a subject of legislation which the United States Constitution left to the states.

In the case of *Collector* v. *Day* (11 Wall. 113; 20 L. Ed. 122), the Supreme Court of the United States said:

> "The general government, and the states, although both exist within the same territorial limits, are separable and distinct sovereignties, acting separately and independently of each other, within their respective spheres. The former, in its appropriate sphere, is supreme; but the states within the limits of their powers not granted, are in the language of the tenth amendment, 'reserved', are as independent of the general government as that government within its sphere is independent of the states."

Moreover when a Federal court is called upon to declare an act of a state legislature unconstitutional it is confronted not only with this presumption against

the right of the Federal Government to assume jurisdiction over any subject matter not granted to the United States Government or denied to the state governments by the United States Constitution, but also by an additional strong presumption in favor of the constitutionality of a statute.

> "When a law of Congress is assailed as void, we look in the National Constitution to see if the grant of specified powers is bread enough to embrace it; but when a state law is attacked on the same ground, it is presumably valid in any case, and this presumption is a conclusive one, unless in the Constitution of the United States or of the State we are able to discover that it is prohibited. We look in the Constitution of the United States for grants of legislative power, but in the Constitution of the State to ascertain if any limitations have been imposed upon the complete power with which the legislative department of the State was vested in its creation. Congress can pass no laws but such as the Constitution authorizes either expressly or by clear implication; while the State legislature has jurisdiction of all subjects on which its legislation is not prohibited." (Cooley's Constitutional Limitations, p. 173.)
>
> "Nor can a court declare a statute unconstitutional and void, solely on the ground of unjust and oppressive provisions, or because it is supposed to violate the natural, social, or political rights of the citizen, unless it can be shown that such injustice is prohibited or such rights guaranteed or protected by the Constitution. . . . The rule of law upon this subject appears to be, that, except where the Constitution has imposed limits upon the legislative power, it must be considered as practically absolute, whether it operates

according to natural justice or not in any particular case. The Courts are not the guardians of the rights of the people of the State, unless those rights are secured by some constitutional provision which comes within the judicial cognizance. The remedy for unwise or oppressive legislation, within constitutional bounds, is by an appeal to the justice and patriotism of the representatives of the people. If this fail, the people in their sovereign capacity can correct the evil; but Courts cannot assure their rights. The judiciary can only arrest the execution of a statute when it conflicts with the Constitution. It cannot run a race of opinions upon points of right, reason, and expediency with the law-making power. Any legislative act which does not encroach upon the powers apportioned to the other departments of the government, being prima facie valid, must be enforced, unless restrictions upon the legislative power can be pointed out in the Constitution, and the case shown to come within them." (*Id.*, p. 166.)

One of the most fundamental rules of constitutional and statutory construction is that a court should attempt to carry out the intention of those who framed and adopted a constitution or statute.

The debates in the Federal Constitutional Convention show that the framers of the Constitution would never have consented to any great degree of Federal control over state legislation. On August 23, 1787, Mr. C. Pinckney moved to add as an additional power to be vested in Congress:

> "To negative all laws passed by the several States interfering in the opinion of the legislature with the general interests and harmony of the

> Union; provided that two-thirds of the members of each House assent to the same."

This was defeated by a vote of six states to five. (New Hampshire, Pennsylvania, Delaware, Maryland, Virginia, aye—5; Massachusetts, Connecticut, New Jersey, North Carolina, South Carolina, Georgia, No—6). Among those who spoke against the adoption of this provision were the two members of the Convention who were later to become Chief Justices of the United States. Mr. Rutledge said on this question:

> "If nothing else, this alone would damn and ought to damn the Constitution. Will any state ever agree to be bound hand and foot in this manner? It is worse than making mere corporations of them whose bye-laws would not be subject to this shackle."

It was twenty-one years after the adoption of the United States Constitution before the United States Supreme Court for the first time declared an act of any state legislature unconstitutional. Even in this case Chief Justice Marshall, who rendered the decision, took occasion to strongly set out the great reluctance which the court should always feel against exercising this power:

> "The question, whether a law be void for its repugnancy to the Constitution, is, at all times, a question of much delicacy, which ought seldom, if ever, to be decided in the affirmative in a doubtful case. The Court, when impelled by duty to render such a judgment, would be unworthy of its station, could it be unmindful of the solemn obligations which that station imposes. But it is not on slight implication and vague conjecture that the

> legislature is to be pronounced to have transcended its powers, and its acts to be considered as void. The opposition between the Constitution and the law should be such that the judge feels a clear and strong conviction of their incompatibility with each other." (*Fletcher* v. *Peck*, 6 Cranch 87, 3 L. Ed. 162.)

Mr. Taney, Mr. Marshall's successor as Chief Justice, said on this same question, in the case of *Ex parte Merryman* (Taney, 246), that the government of the United States is one of delegated and limited powers; that it derives its existence and authority altogether from the Constitution, and neither of its branches, executive, legislative, nor judicial can exercise any of the powers of government beyond those specified and granted; for the tenth amendment to the Constitution, in express terms, provides that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states, respectively, or to the people."

Chief Justice Chase, the successor of Mr. Taney, in turn said:

> "Both the states and the United States existed before the Constitution. The people through that instrument established a more perfect union, by substituting a national government, acting with ample powers directly upon the citizens, instead of the confederate government, which acted with the powers, greatly restricted, only upon the states. But, in many of the articles of the Constitution the necessary existence of the states, and within their proper sphere, the independent authority of the states are distinctly recognized. To them nearly the whole charge of interior regu-

lation is committed or left; to them, and to the people, all powers, not expressly delegated to the national government, are reserved." (Lane County *v.* Oregon, 7 Wall. 71; 19 L. Ed. 104.)

Above all, the Supreme Court has frequently emphasized the fact that the question of the wisdom or expediency of a law must be decided by the legislative department of the government, and is entirely outside the field of judicial consideration.

In *Otis & Gassman* v. *Parker* (187 U. S. 606, 47 L. Ed. 323), the Court said:

"While the courts must exercise a judgment of their own, it by no means is true that every law is void which may seem to the judges who pass upon it excessive, unsuited to its ostensible end, or based upon conceptions of morality with which they disagree. Considerable latitude must be allowed for differences of view, as well as for possible peculiar conditions which this court can know but imperfectly if at all. Otherwise a constitution, instead of embodying only relatively fundamental rules of right, as generally understood by all English-speaking communities, would become the partisan of a particular set of ethical or economic opinions, which by no means are held *semper ubique et ab omnibus.*

"Even if the provision before us should seem to us not to have been justified by the circumstances locally existing in California at the time when it was passed, it is shown by its adoption to have expressed a deep-seated conviction on the part of the people concerned as to what that policy required. Such a deep-seated conviction is entitled to great respect. If the state thinks that an admitted evil cannot be prevented except by

prohibiting a calling or transaction not in itself necessarily objectionable, the courts cannot interfere, unless, in looking at the substance of the matter, they can see that it 'is a clear, unmistakable infringement of rights secured by the fundamental law'. Booth *v.* Illinois, 184 U. S. 425, 429; 46 L. Ed. 623, 626; 22 Sup. Ct. Rep. 425, 427. No court would declare a usury law unconstitutional, even if every member of it believed that Jeremy Bentham had said the last word on that subject, and had shown for all times that such laws did more harm than good. The Sunday laws, no doubt, would be sustained by a bench of judges even if every one of them thought it superstitious to make any day holy. Or, to take cases where opinion has moved in the opposite direction, wagers may be declared illegal without the aid of statute, or lotteries forbidden by express enactment, although at an earlier day they were thought pardonable at least. The case would not be decided differently if lotteries had been lawful when the 14th Amendment became law, as indeed they were in some civilized states. See Ballock *v.* State, 73 Md. 1; 8 L. R. A. 671, 20 Atl. 184. We cannot say there might not be conditions of public delirium in which at least a temporary prohibition of sales on margins would be a salutary thing. Still less can we say that there might not be conditions in which it reasonably might be thought a salutary thing, even if we disagreed with this opinion. . . . If at that time the provision of the Constitution, instead of being put there, had been embodied in a temporary act, probably no one would have questioned it, and it would be hard to take a distinction solely on the ground of its more permanent form. Inserting the provision in the Constitution showed, as we

have said, the conviction of the people at large that prohibition was a proper means of stopping the evil. And as was said with regard to a prohibition of option contracts in Booth *v.* Illinois, 184 U. S. 425, 431; 46 L. Ed. 623, 627; 22 Sup. Ct. Rep. 425, we are unwilling to declare the judgment to have been wholly without foundation."

In the above case the court thus strongly lays down the principle that if a state law might be justified under any set of circumstances, the Supreme Court should assume that the legislature enacted the law on account of the existence of such set of circumstances.

In *Booth* v. *Illinois,* (184 U. S. 425, 431; 46 L. Ed. 623, 627) the Supreme Court said:

"We are unwilling to declare these views of the state court to be wholly without foundation, and therefore cannot adjudge that the legislature of Illinois transcended the limits of constitutional authority when enacting the statute in question. In reaching this conclusion we have recognized the principle, long established and vital in our constitutional system, that the courts may not strike down an act of legislation as unconstitutional, unless it be plainly and palpably so.

"The statute here involved may be unwise. But an unwise enactment is not necessarily for that reason, invalid."

In *Jones* v. *City of Portland,* 245 U. S. 217-221, 62 L. Ed. 253-255, it was said:

"The attitude of this court towards state legislation purporting to be passed in the public interest, and so declared to be by the decision of the Court of last resort of the state passing the

act, has often been declared. While the ultimate authority to determine the validity of legisation under the 14th Amendment is vested in this court, local conditions are of such a varying character that what is or is not a public use in a particular state is manifestly a matter respecting which local authority, legislative and judicial, has peculiar facilities for securing accurate information."

In *Hebe Company* v. *Shaw*, 248 U. S. 297, 63 L. Ed. 255, the Supreme Court cites with approval the statement in *Price* v. *Illinois*, 238 U. S. 446, 452, 59 L. Ed. 1400-1405, 35 Sup. Ct. Rep. 892, that "the legislature is entitled to its own judgment," and, as a final test in the case before it says: "it is impossible for this court to say that they (i. e. the measures adopted) *might not be believed to be necessary* in order to accomplish the desired ends."

Still again in *Yazoo & Mississippi Valley Railroad Company* v. *Adams*, (180 U. S. 1, 45 L. Ed. 395) it was said:

> "Certainly this court is not the keeper of the states' conscience".

So vitally does a case of this character affect the sovereignty of the states, that in a similar suit in the past an individual justice of the Supreme Court indicated the opinion that such a suit was in reality one against the state itself and therefore prohibited by the 11th Amendment.

Grounds Upon Which it is Alleged that the Oregon School Law is Unconstitutional.

The opponents of the Oregon School Law charge that:

(1) It impairs the obligation of contracts;

(2) It abridges the privileges and immunities of the citizens of the United States;

(3) It deprives persons of property without due process of law;

(4) It deprives persons of liberty without due process of law; and

(5) It denies the equal protection of the laws.

In order to sustain their charge that the Oregon School Law is unconstitutional it is necessary for the defendants in error to clearly prove the truth of at least one of the above mentioned allegations. It is not a satisfactory substitute for this necessary clear proof as to one allegation to try to create some shadow of doubt as to two or three and to then attempt to pile those shadowy doubts up on top of each other.

It is therefore necessary to consider each of these constitutional prohibitions separately, each on its own merits.

The Oregon School Law does not Impair the Obligation of Contracts.

The assertion that the Oregon School Law impairs the obligation of contracts is clearly disposed of by the decision of the United States Supreme Court in the case of *Berea College* v. *Kentucky,* 211 U. S. 45; 53 L. Ed. 81. In this case it was contended that the obligation of the charter of Berea College was impaired by a Kentucky statute which had the effect of preventing colored students from attending the college, and thus reduced the number of students. The United States Supreme Court decided against the contention. In the present case it is claimed that the number of students at the complaining institutions will be decreased by the loss of all students under a cer-

tain age. It appears that the legal principles involved in the two cases are identical, and the decision in the earlier case should control the decision in the present case as to this particular contention by the defendants in error.

It is also an elementary principle of constitutional law that a state cannot contract away its police powers, or any of its fundamental governmental powers. *Beer Co.* v. *Massachusetts,* 97 U. S. 25; 24 L. Ed. 989; *Stone* v. *Mississippi,* 101 U. S. 814; 25 L. Ed. 1079; *Boyd* v. *Alabama,* 94 U. S. 650, 24 L. Ed. 302; *Illinois Central Railroad Co.* v. *Illinois,* 146 U. S. 387, 36 L. Ed. 1018.

The Fourteenth Amendment.

All of the remaining constitutional provisions which it is alleged that the Oregon School Law violates are contained in the Fourteenth Amendment. It is therefore appropriate that a few words should be said concerning the effect and general character of this amendment.

After the adoption of this amendment there were those who sought to give to it such a broad interpretation as would have completely revolutionized the relations between the Federal and State Governments. This extreme view, however, was effectually swept away by the decision of the United States Supreme Court in the *Slaughter House Cases* (16 Wall. 36; 21 L. Ed. 394).

It is now definitely settled that the Fourteenth Amendment did not radically alter the relations between the Federal and State Governments, or make the provisions of the Bill of Rights in the United

States Constitution binding upon the state governments.

> "The amendment creates no rights not existing before it. It originates none. It adds nothing to the catalogue of privileges, immunities, rights of life, liberty or property, or of equality before the law. It does not specify or define any of them. It only defends those rights existing under the law of the land, federal or state, and in being at its adoption, or born of the law afterwards. This is an important consideration in the construction and application of the amendment. It brings nothing new. It adds no privileges. The things it guarantees are old. It is only Magna Charta over again. It only enjoins upon the state, by the voice of the highest law, the duty of regarding and conceding certain cardinal rights, and grants to the national government the power to correct and reverse their plain denial by the action of the state. This is strongly illustrated by decisions holding that the right of suffrage and making a living by practising law are neither granted nor protected by this amendment. What could more strongly show that the amendment gave no new rights than the principle settled by many cases that 'due process of law' means the same as the words 'law of the land' in old Magna Charta?" (A treatise on the Rights and Privileges guaranteed by the Fourteenth Amendment to the Constitution of the United States, by Henry Brannon, sometime judge of the Supreme Court of West Virginia, pp. 47-48.)

The Oregon Statute does not Abridge the Privileges and Immunities of a Citizen of the United States.

The charge that the Oregon statute violates the privileges and immunities of citizens of the United

States is so manifestly without merit or legal basis as to be hardly worthy of serious consideration. Such a claim is completely disposed of by the following quotation from the decision of the United States Supreme Court in the *Slaughter House Cases* (16 Wall. 36; 21 L. Ed. 394) in which the meaning of the expression "the privileges and immunities of citizens of the United States" as the term is used in the Fourteenth Amendment to the United States Constitution, is thoroughly discussed:

> "It is quite clear, then, that there is a citizenship of the United States and a citizenship of a State, which are distinct from each other and which depend upon different characteristics or circumstances in the individual.
>
> "We think this distinction and its explicit recognition in this Amendment of great weight in this argument, because the next paragraph of this same section, which is the one mainly relied on by the plaintiffs in error, speaks only of privileges and immunities of citizens of the United States, and does not speak of those of citizens of the several states. The argument, however, in favor of the plaintiffs, rests wholly on the assumption that the citizenship is the same and the privileges and immunities guaranteed by the clause are the same.
>
> "The language is: 'No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States'. It is little remarkable, if this clause was intended as a protection to the citizen of a state against the legislative power of his own state, that the words 'citizen of the state' should be left out when it is so carefully used, and used in contra-

distinction to 'citizens of the United States' in the very sentence which precedes it. It is too clear for argument that the change in phraseology was adopted understandingly and with a purpose.

"Of the privileges and immunities of the citizen of the United States, and of the privileges and immunities of the citizen of the state, and what they respectively are, we will presently consider; but we wish to state here that it is only the former which are placed by this clause under the protection of the Federal Constitution, and that the latter, whatever they may be, are not intended to have any additional protection by this paragraph of the Amendment.

"If, then, there is a difference between the privileges and immunities belonging to a citizen of the United States as such, and those belonging to the citizen of the state as such, the latter must rest for their security and protection where they have heretofore rested; for they are not embraced by this paragraph of the Amendment.

"The first occurrence of the words 'privileges and immunities' in our constitutional history is to be found in the fourth of the Articles of the Old Confederation.

"It declares 'that, the better to secure and perpetuate mutual friendship and intercourse among the people of the different states in this Union, the free inhabitants of each of these states, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all the privileges and immunities of free citizens in the several states; and the people of each state shall have free ingress and regress to and from any other state, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions, and restrictions as the inhabitants thereof respectively.'

"In the Constitution of the United States, which superseded the Articles of Confederation, the corresponding provision is found in section two of the 4th article, in the following words: 'The citizens of each state shall be entitled to all the privileges and immunities of citizens of the several states.'

"There can be but little question that the purpose of both these provisions is the same, and that the privileges and immunities intended are the same in each. In the Articles of the Confederation we have some of these specially mentioned, and enough perhaps to give some general idea of the class of civil rights meant by the phrase.

"Fortunately we are not without judicial construction of this clause of the Constitution. The first and the leading case on the subject is that of Corfield *v.* Coryell, decided by Mr. Justice Washington in the circuit court for the district of Pennsylvania in 1823. 4 Wash. C. C. 371.

"The enquiry, he says, is, what are the privileges and immunities of the citizens of the several states? We feel no hesitation in confining these expressions to those privileges and immunities which are fundamental; which belong of right to the citizens of all free governments, and which have at all times been enjoyed by citizens of the several states which compose this Union, from the time of their becoming free, independent, and sovereign. What these fundamental principles are, it would be more tedious than difficult to enumerate. They may all, however, be comprehended under the following general heads; protection by the government, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety, subject, nevertheless, to such restraints as the government may prescribe for the general good of the whole.

"The constitutional provision there alluded to did not create these rights, which it called privileges and immunities of citizens of the states. It threw around them in that clause no security for the citizen of the state in which they were claimed or exercised. Nor did it profess to control the power of the state governments over the rights of its citizens.

"Its sole purpose was to declare to the several states, that whatever those rights, as you grant or establish them to your own citizens, or as you limit or qualify, or impose restrictions on their exercise, the same, neither more or less, shall be the measure of the rights of citizens of other states within your jurisdiction.

"It would be the vainest show of learning to attempt to prove by citation of authority, that up to the adoption of the recent amendments, no claim or pretense was set up that those rights depended on the Federal Government for their existence or protection, beyond the very few express limitations which the Federal Constitution imposed upon the states—such, for instance, as the prohibition against *ex post facto* bills of attainder, and laws impairing the obligation of contracts. But with the exception of these and a few other restrictions, the entire domain of the privileges and immunities of citizens of the states, as above defined, lay within the constitutional and legislative power of the states, and without that of the Federal Government. Was it the purpose of the 14th Amendment, by the simple declaration that no state should make or enforce any law which shall abridge the privileges and immunities of citizens of the United States, to transfer the security and protection of all the civil rights which we have mentioned from the states to the Federal

> Government? And where it is declared that Congress shall have the power to enforce that article, was it intended to bring within the power of Congress the entire domain of civil rights heretofore belonging exclusively to the states?
>
> "Having shown that the privileges and immunities relied on in the argument are those which belong to citizens of the states as such, and that they are left to the state government for security and protection, and not by this article placed under the special care of the Federal Government, we may hold ourselves excused from defining the privileges and immunities of citizens of the United States which no state can abridge, until some case involving those privileges may make it necessary to do so.
>
> "But lest it should be said that no such privileges and immunities are to be found if those we have been considering are excluded, we venture to suggest some which owe their existence to the Federal Government, its national character, its Constitution, or its laws."

Just what is comprised under the term "privileges and immunities of citizens of the United States" was discussed in considerable detail in the decision in the case of *Twining* v. *New Jersey,* 211 U. S. 78, 53 L. Ed. 97:

> "Privileges and immunities of citizens of the United States, on the other hand, are only such as arise out of the nature and essential character of the national government, or are specifically granted or secured to all citizens or persons by the Constitution of the United States." (Slaughter House Cases, supra, p. 79; Re Kemmler, 136 U. S. 436, 448; 34 L. Ed. 519, 524; 10 Sup. Ct.

Rep. 930; Duncan *v.* Missouri, 152 U. S. 377, 382; 38 L. Ed. 485, 487; 14 Sup. Ct. Rep. 570.

"Thus, among the rights and privileges of national citizenship recognized by this court are the right to pass freely from state to state." (Crandall *v.* Nevada, 6 Wall. 35; 18 L. Ed. 745); the right to petition Congress for a redress of grievances (United States *v.* Cruikshank, supra); the right to vote for national officers (Ex parte Yarbrough, 110 U. S. 651; 28 L. Ed. 274, 4 Sup. Ct. Rep. 152; Wiley *v.* Sinkler, 179 U. S. 58, 45 L. Ed. 84, 21 Sup. Ct. Rep. 17); the right to enter the public lands (United States *v.* Waddell, 112 U. S. 76, 28 L. Ed. 673, 5 Sup. Ct. Rep. 35); the right to be protected against violence while in the lawful custody of a United States marshal (Logan *v.* United States, 144 U. S. 263, 36 L. Ed. 429, 12 Sup. Ct. Rep. 617); and the right to inform the United States authorities of violation of its laws (Re Quarles, 158 U. S. 532, 39 L. Ed. 1080, 15 Sup. Ct. Rep. 959)."

This same case sums up this whole question in the following paragraph:

"There can be no doubt, so far as the decision in the Slaughter House cases has determined the question, that the civil rights sometimes described as fundamental and inalienable, which before the War Amendments, were enjoyed by state citizenship, and protected by state government, were left untouched by this clause of the 14th Amendment. Criticism of this case has never entirely ceased, nor has it ever received universal assent by members of this court. . . . But we need not now inquire into the merits of the original dispute.

> This part, at least, of the Slaughter House Cases, has been steadily adhered to by this Court."

To the same effect see also: *Hodges* v. *United States,* 203 U. S. 1, 51 L. Ed. 65, 27 Sup. Ct. Rep. 6; *Hudson County Water Co.* v. *McCarter,* 209 U. S. 349, 52 L. Ed. 828; *Corfield* v. *Coryell,* 4 Wash. 371.

There is clearly no privilege or immunity involved in the present controversy which can fall within the definition of "privileges or immunities of citizens of the United States" contained in the decisions in the *Slaughter House Cases* and *Twining* v. *New Jersey.* If any privileges or immunities have been infringed they are those relative to the rights of parents over their children and the whole field of the law of Domestic Relations is beyond dispute under State jurisdiction and not under Federal jurisdiction.

In *Eadleigh* v. *Newhall,* 136 Fed. 941, it was held that parents have no right to the custody of their infant children, except subject to the paramount right of the State, to be exercised whenever deemed for the best interest of the children; that "the rights, privileges, and immunities which the Fourteenth Amendment guarantees are those of the United States and not of the States;" and that questions relative to the control of the minor children were questions of state law and not of Federal law.

In conclusion, as to the point it may be said that no right of a citizen can be held to be "a privilege or immunity of citizens of the United States" if such privilege or immunity existed before the adoption of the Constitution of the United States, and would exist independently of the provisions of the Constitution of the United States.

Due Process of Law.

The most overworked portion of the United States Constitution is the "due process of law" clause of the Fourteenth Amendment.

Although the Supreme Court in between eighty-five and ninety per cent of the cases involving this clause (even after we exclude those disposed of by memoranda decisions) which have come before it, has held that there was no denial of due process of law, the cry of such denial continues to be constantly raised by lawyers and litigants, as a last resort, upon the flimsiest of grounds.

Attention was called very early to this state of affairs by Mr. Justice Miller in the decision of the court in the case of *Davidson* v. *New Orleans,* 96 U. S. 97, 24 L. Ed. 616, in the following language:

> "It is not a little remarkable, that while this provision has been in the Constitution of the United States, as a restraint upon the authority of the Federal Government, for nearly a century, and while, during all that time, the manner in which the powers of that Government have been exercised has been watched with jealousy, and subjected to the most rigid criticism in all its branches, this special limitation upon its powers has rarely been invoked in the judicial forum or the more enlarged theatre of public discussion. But while it has been a part of the Constitution as a restraint upon the power of the States, only a very few years, the docket of this court is crowded with cases in which we are asked to hold that State Courts and State Legislatures have deprived their own citizens of life, liberty or property without due process of law. There is

> here abundant evidence that there exists some strange misconception of the scope of this provision as found in the Fourteenth Amendment. In fact, it would seem, from the character of many of the cases before us, and the arguments made in them, that the clause under consideration is looked upon as a means of bringing to the test of the decision of this court the abstract opinions of every unsuccessful litigant in a State Court of the justice of the decision against him, and of the merits of the legislation on which such a decision may be founded."

The most frequent and glaring mistake made by litigants relative to the due process of law clause, a mistake into which the defendants in error in this case seem to have fallen, lies in the apparent assumption that this clause in itself constitutes a guarantee of certain substantive rights, while in reality it plainly states that it is concerned solely with questions of procedure.

The statement can be made without qualification or exception that this clause does not confer any new substantive right of property or liberty upon any inhabitant of any State in the United States.

It confers no new rights, it only protects those which were already in existence, or which were later created. A person who contends that he has been deprived of some right without due process of law may be properly called upon to show from what source he derives the alleged right.

In some cases, where the right was a fundamental one, the existence of which was indisputable, and only the question of the violation was in dispute, the Supreme Court may have used language which might

be construed as indicating that the right itself was given by the Amendment; but in cases where the right itself was in dispute the Supreme Court has always recognized that the existence of the right cannot be based upon the Fourteenth Amendment, and has attempted to trace out whether the existence of the alleged right could be based upon some other constitutional provision, upon some statute, or upon the common law.

Thus in *Truax* v. *Raich*, 239 U. S. 33, 60 L. Ed. 131, where a law of Arizona requiring that every employer of more than five workers at one time, "regardless of the kind or class of work or sex of workers shall employ not less than eighty per cent qualified electors or native-born citizens of the United States or some subdivision thereof," was held to be in violation of the Fourteenth Amendment, the Supreme Court carefully showed how the right of the defendant in error which was held to be infringed grew out of the rights granted to him by the Federal Government when he was admitted as an immigrant into the United States.

The defendants in error in this case, therefore, must begin by laying the foundation for the very extraordinary rights claimed by them somewhere else than in the Fourteenth Amendment. The rights which they claim are certainly not granted them by the Federal Constitution, and no cases have been cited which hold that such rights existed at common law.

The Oregon Statute does not Deprive Anyone of Property without Due Process of Law.

The case set out by the plaintiff in the case of *Hill Military Academy* v. *Walter M. Pierce, Governor of the State of Oregon, et al.*, is mainly based upon the

charge that by the operation of the new Oregon Public School law the plaintiff would be deprived of his property without due process of law and the Judges in the District Court expressly based their decision entirely upon this point.

This point would seem to be very effectively disposed of, against the contentions of the plaintiffs and the decision in the District Court, by the many decisions of the United States Supreme Court upholding the constitutionality of various prohibition laws passed by different states. In many of these states it was charged that persons who had invested money in the liquor traffic while it was a lawful business were deprived of their property without due process of law by the passage of the Prohibition Amendment.

In discussing this contention in *Mugler* v. *Kansas* (123 U. S. 623; 31 L. Ed. 205, 8 Sup. Ct. Rep. 273) the Supreme Court said:

> "As already stated, the present case must be governed by principles that do not involve the power of eminent domain, in the exercise of which property may be taken for public use without compensation. . . .
>
> "It is true that when the defendants in these cases purchased or erected their breweries, the laws of the State did not forbid the manufacture of intoxicating liquors. But the State did not thereby give an assurance, or come under an obligation, that its legislation upon that subject would remain unchanged, Indeed, as was said in Stone *v.* Mississippi, 101 U. S. 814 (25 L. Ed. 1079) the supervision of the public health and the public morals is a governmental power 'continuing in its nature,' and 'to be dealt with as the special exigencies of the moment may require', and that

'for this purpose the largest legislative discretion is allowed, and the discretion cannot be parted with any more than the power itself.' So in Boston Beer Co. *v.* Massachusetts, 97 U. S. 32 (24 L. Ed. 991); 'If the public safety or the public morals require the discontinuance of any manufacture or traffic, the hand of the Legislature cannot be stayed from providing for its discontinuance by an incidental inconvenience which individuals or corporations may suffer.' "

See also *Kidd* v. *Pearson,* 128 U. S. 1, 23; 32 L. Ed. 346; *Clark Distilling Co.* v. *Western Maryland R. Co.,* 242 U. S. 311, 61 L. Ed. 326, 37 Sup. Ct. Rep. 180; *Crane* v. *Campbell,* 245 U. S. 304, 62 L. Ed. 304.

This principle of the non-liability of the government for loss to business incidentally resulting from state legislation is not confined to business of a similar character to that of the liquor traffic. Thus, in the case of *Madera Waterworks* v. *City of Madera,* 228 U. S. 454, 57 L. Ed. 915, the Supreme Court held that the property of a private waterworks company was not taken without due process of law, by the municipal construction of a competing plant, where there is no contract immunity from such competition, although the waterworks company may be forbidden by the local law to divert its property to other uses, and would be called upon to pay taxes to help its rival to succeed. This was the case of a business which everyone would concede to be innocent and beneficial, and which was, moreover, based upon a public franchise, but which was nevertheless held to be absolutely without any legal rights as against public competition.

In *Hadacheck* v. *Sebastian,* 239 U. S. 394, 60 L. Ed. 394, it was held that a municipal ordinance prohibiting brickmaking within a designated area, did not take,

without due process of law, the property of an owner of a tract of land within the prohibited district, although such land contained valuable deposits of clay suitable for brickmaking which could not profitably be removed and manufactured into brick elsewhere, and it was far more valuable for brickmaking than for any other purpose, and had been acquired by him before it was annexed to the municipality and had long been used by him as a brickyard.

Again, in *Tanner* v. *Little*, 240 U. S. 369; 60 L. Ed. 691, the Supreme Court upheld the imposition under Washington Laws 1913, Chap. 134, of a prohibitive license tax upon merchants using stamps, tickets, or coupons redeemable in cash, as inducements to purchase. The court thus held that there was no denial of due process of law to those engaged in the "trading stamp" business, although their business previously legal and certainly not *malum in se*, was destroyed as a result of state legislation.

In *Hebe Company* v. *Shaw*, 248 U. S. 297, 63 L. Ed. 255, the court upheld the constitutionality of an Ohio statute prohibiting the sale of condensed skim milk, although saying that such product might undoubtedly be healthful, citing *Purity Extract and Tonic Company* v. *Lynch*, 226 U. S. 192, 204, 57 L. Ed. 184, 183, 33 Sup. Ct. Rep. 44, to the effect that the power of the legislature "is not to be denied simply because some innocent articles or transactions may be found within the prescribed class."

Cases in which the Supreme Court has protected the right *to labor*, are not proper precedents in this case. There is a great distinction between the right to work, and the right to have a private business protected as against public competition or the exercise of the police powers of the state.

In the case of *Terrace* v. *Thompson,* 264 U. S. 197, involving the constitutionality of the Alien Land Law of the State of Washington, the Supreme Court expressly called attention to the fact that the decision in *Truax* v. *Raich,* (a case greatly relied upon by the Judges in the District Court in support of their decision) protected the right to labor, not the right to engage in any kind of a business. This decision was in part as follows: "It was said (i. e. in Truax *v.* Raich) that the right to work for a living in the common occupations of the community is a part of the freedom which it was the purpose of the 14th Amendment to secure. In the case before us, the thing forbidden is very different. It is not an opportunity to earn a living in common occupations of the community, but it is the privilege of owning or controlling agricultural land within the State. The quality and allegiance of those who own, occupy and use the farm lands within its borders are matters of highest importance and affect the safety and power of the State itself."

Is "the safety and power of the State" less effected by the control of education than it is by the control of farm lands?

The decision in the District Court contains the statement that: "the right to engage in a useful, legitimate business, not harmful or vicious, is protected under the amendment and cannot be abrogated," and cites in support of this proposition of law the case of *Murphy* v. *California,* 225 U. S. 623, 32 Sup. Ct. 697, 56 L. Ed. 1229. A careful reading, however, of this decision (which decided that a municipal ordinance prohibiting the keeping of billiard and pool tables for hire or public use did not constitute a denial of either due process of law or the equal protection of the laws) clearly shows that not even the dicta in the decision

supports so broad a statement as that contained in the decision of the lower court.

The Supreme Court has never held that there was a denial of due process of law where a private business was injured or even destroyed by state competition in a field in which a state might lawfully engage. If a state may engage at all in any field the question of the effect of state competition upon private business is immaterial.

The owners of private schools have even less basis for the claim that their property is taken without due process of law through the enactment of a compulsory education law than the owners of property used for saloon purposes had when their business was interfered with by a state prohibition law. In the latter case the entire use of the property for the purpose for which it was intended was prohibited; in the former case the school is only deprived of certain prospective students. A private school might still be continued for students under or over the age limits set by the law. A properly qualified teacher in a private school might easily secure a position as one of the additional teachers who would be required by the public schools.

No person in any business has such an interest in possible customers, as to enable him to restrain the government from exercising any proper power because it might deprive him of such patronage. To state such a contention is to show its absurdity.

The case of the Hill Military Academy is no stronger under the law, than would have been the case of a merchant who had attempted to restrain the operation of the draft act during the recent war on the ground that the government, by taking away certain of his customers, was depriving him of his property without due process of law.

With further reference to what is meant by the prohibition against taking property without due process of law, attention is called to the decision of the United States Supreme Court in the case of *Munn* v. *Illinois* (94 U. S. 113, 24 L. Ed. 77):

> "Looking then, to the common law, from whence came the right which the Constitution protects, we find that when private property is 'affected with a public interest, it ceases to be *juris privati* only'. This was said by Lord Chief Justice Hale more than two hundred years ago in his treatise De Portibus Maris, 1 Warg, L. Tr. 78, and has been accepted without objection as an essential element in the law of property ever since. Property does become clothed with a public interest when used in a manner to make it of public consequence, and affect the community at large. When, therefore, one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of that interest he has thus created."

The New Oregon School Law does not Deprive any Person of Liberty without Due Process of Law.

The question as to the deprivation of liberty without due process of law is very quickly disposed of, so far as these cases are concerned, by the fact that the defendants in error are corporations.

It is a well settled principle that the liberty protected by the Fourteenth Amendment is that of natural and not of artificial persons.

> "Equally without foundation is the contention that the statute, if enforced, will be inconsistent

with the liberty guaranteed by the Fourteenth Amendment. The liberty referred to in that Amendment is the liberty of natural, not artificial persons." *Northwestern National Life Insurance Company* v. *Riggs*, 203 U. S. 243, 255, 51 L. Ed. 168, 173.

"The liberty guaranteed by the Fourteenth Amendment against deprivation without due process of law is the liberty of natural, not artificial persons." *Western Turf Association* v. *Greenberg*, 204 U. S. 359, 363, 51 L. Ed. 520, 522.

Nor can the defendants in error claim to have any such interests in the liberties of the school children of the State of Oregon or their parents. No person has the right to test the constitutionality of a law merely because it may affect the liberty of another person in whom he has no recognized legal interest.

In *Gusman* v. *Marrero*, 180 U. S. 81, 45 L. Ed. 436, the Supreme Court said:

> "It follows necessarily that he has no cause of action. However friendly he may be to the doomed man and sympathetic for his situation; however concerned he may be lest unconstitutional laws be enforced, and however laudible such sentiments are,—the grievance they suffer and feel is not special enough to furnish a cause of action in a case like this."

The question as to the interest which the defendants in error may have in the school children of Oregon and their parents as prospective patrons raises the question of deprivation of property without due process of law, and not that of 'deprivation of liberty without due process of law,' and has already been discussed.

The case of *Truax* v. *Raich*, 239 U. S. 33, 36 Sup. Ct. Rep. 7, 60 L. Ed. 131, relied upon by the judges in the

lower court, who decided that the Oregon School Law was unconstitutional is not applicable to the present case. In the earlier case, Raich, who sought to enjoin the enforcement of the Arizona anti-alien labor law, was a natural person whose own liberties were protected against deprivation without due process of law by the Fourteenth Amendment, and his own liberty to contract was directly affected by the law, although the penalty for its violation was exclusively directed against his employer.

Although it is believed that the charge that the new Oregon School Law deprives persons of liberty without due process of law is not properly before the Court in this case, it is also believed that such a charge could not be sustained even if raised by persons qualified to raise this question.

In this connection, it should be observed at the outset that no claim can arise that the school children themselves are deprived, by this law, of liberty without due process of law. It will be admitted by all that children under sixteen years of age cannot be given liberty of choice as to their education; this must be under the control either of the state, or of their parents, or of both the state and their parents.

If any persons have been deprived of liberty without due process of law it is the parents of the school children. The determination of this last point brings us to the question of the respective authority of the state and of parents over minor children.

Even in the freest country no person can possess absolutely uncontrolled liberty, either with respect to himself personally, or to his children.

It may be probably taken as admitted that a parent cannot be held to have a more complete right of con-

trol over the actions of his child than over his own actions.

> "The possession and enjoyment of all rights are subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, good order and morals of the community. Even liberty itself, the greatest of all rights, is not unrestricted license to act according to one's own will." (*Crawley* v. *Christensen,* 137 U. S. 86, 34 L. Ed. 620.)
>
> "But the liberty secured by the Constitution of the United States to every person within its jurisdiction does not import an absolute right in each person to be, at all times and in all circumstances, wholly freed from restraint. There are manifold restraints to which every person is necessarily subject for the common good. On any other basis organized society could not exist with safety to its members. Society based on the rule that each one is a law unto himself would soon be confronted with disorder and anarchy." (*Jacobson* v. *Massachusetts,* 197 U. S. 11, 49 L. Ed. 643.)

Under all governments, even those which are the most free and democratic in their character, the citizen must always owe duties to the state; and it necessarily follows that the state has an interest in making it certain (which can only be done by appropriate legislation) that the citizen is fitted, both in mind and body to perform these duties.

In the case of *Jacobson* v. *Massachusetts* (197 U. S. 11; 49 L. Ed. 643), the Supreme Court of the United States carefully discussed the meaning of "liberty" as guaranteed by the Fourteenth Amendment: "The liberty secured by the Fourteenth Amendment, this

court has said, consists, in part, of the right of a person 'to live and work where he will' (*Allgeyer* v. *Louisiana,* 165 U. S. 578; 41 L. Ed. 832; 17 Sup. Ct. Rep. 427); and yet he may be compelled, by force if need be, against his will and without regard to his personal wishes or his pecuniary interests, or even his religious or political convictions, to take his place in the ranks of the army of his country and risk the chance of being shot down in its defense. It is not, therefore, true that the power of the public to guard itself against imminent danger depends in every case involving the control of one's body upon his willingness to submit to reasonable regulations established by the constsituted authorities, under the sanction of the State, for the purpose of protecting the public collectively against such danger."

In the case of *Mayor, etc. of New York* v. *Miln* (11 Peters 102, 97 L. Ed. 648), the Supreme Court of the United States said:

> "We think it as competent and as necessary for a State to provide precautionary measures against the moral pestilence of paupers, vagabonds, and possibly convicts, as it is, to guard against the physical pestilence which may arise from unsound and infectious articles imported, or from a ship, the crew of which may be laboring under an infectious disease."

The discretionary powers of a state are broad enough to permit it to decide that compulsory attendance at public schools is a proper "precautionary measure against the moral pestilence of paupers, vagabonds, and possibly convicts."

The voters of Oregon who adopted the new School Law for their State had the right to base their action on the belief that the fact that the great increase in

juvenile crime in the United States followed so closely after the great increase in the number of children in the United States who were not attending public schools, was more than a coincidence.

The voters in Oregon might also have based their action in adopting this law upon the alarm which they felt at the rising tide of religious suspicions in this country, and upon their belief that the basic cause of such religious feelings was the separation of children along religious lines during the most susceptible years of their lives, with the inevitable awakening of a consciousness of separation, and a distrust and suspicion of those from whom they were so carefully guarded. The voters of Oregon might have felt that the mingling together, during a portion of their education, of the children of all races and sects might be the best safeguard against future internal dissensions with the consequent weakening of the community against foreign dangers.

In the case of *Mayor, etc. of New York* v. *Miln* (*supra*), the Supreme Court was considering the evil effects upon a State of the immigration of ignorant foreigners, unacquainted with and lacking in sympathy with, American institutions and ideals. In this connection, it should be remembered that the vast majority of children not now attending the Public Schools of Oregon who will be compelled to do so by the new statute, are either themselves immigrants or the children of immigrants.

Surely a State can require of all immigrants admitted to all the advantages and opportunities of life in the United States, that their children may be taught by the State the English language, and the character of American institutions and government.

Those who assert the unconstitutionality of the Oregon School Law appear to rely to a great extent upon the decision in *Meyer* v. *Nebraska*, 262 U. S. 390, 67 L. Ed. 1042. The Nebraska law therein held unconstitutional, however, was a law of a very different character from the Oregon School Law. The Nebraska law forbade the study of certain subjects; the Oregon Law commands the study of certain subjects to be specified by the State.

The case of *Meyer* v. *Nebraska* merely decided that the parents had some rights of control over the education of their children; the court is now asked to render a decision the practical effect of which will be that the States will be deprived of any control over education, as the degree of control over private schools which the opponents of the Oregon School Law would concede to the States is a merely nominal one, of no practical importance.

The compulsory attendance of all children of school age at the public schools during the relatively short hours during which these schools are in session would not deprive the parents of any just rights. There would remain an abundance of time and opportunity for supplementary instruction either in religion or in the language, history, and traditions of the land of their ancestors. The objectionable feature about the Nebraska law was that it forbade the teaching of modern languages either in regular schools, or in supplementary schools.

That supplementary schools of the kind referred to may successfully function in connection with the regular public schools is not a matter of speculation or doubt; it has already been proved by the success

of such schools as the supplementary Jewish schools in New York City.

The defendants in error particularly rely upon the following dicta in this case of *Meyer* v. *Nebraska:*

> "While this court has not attempted to define with exactness the liberty thus guaranteed, the term has received much consideration, and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint, but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and, generally, to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men." Citing Slaughter House Cases, 16 Wall. 36, 21 L. Ed. 394; Butchers' Union S. H. & L. S. L. Co. *v.* Crescent City L. S. L. & S. H. Co., 111 U. S. 746, 28 L. Ed. 585, 4 Sup. Ct. Rep. 652; Yick Wo. *v.* Hopkins, 118 U. S. 356, 30 L. Ed. 220, 6 Sup. Ct. Rep. 1064; Minnesota *v.* Barber, 136 U. S. 313, 34 L. Ed. 455, 3 Interstate Commerce Rep. 185, 10 Sup. Ct. Rep. 862; Allgeyer *v.* Louisiana, 165 U. S. 578, 41 L. Ed. 832, 17 Sup. Ct. Rep. 427; Lockner *v.* New York, 198 U. S. 45, 49 L. Ed. 937, 25 Sup. Ct. Rep. 539, 3 Ann. Cas. 1133; Twining *v.* New Jersey, 211 U. S. 78, 53 L. Ed. 97, 29 Sup. Ct. Rep. 14; Chicago, B. & Q. R. Co. *v.* McGuire, 219 U. S. 549, 55 L. Ed. 328, 31 Sup. Ct. Rep. 259; Truax *v.* Raich, 239 U. S. 33, 60 L. Ed. 131, L. R. A. 1916 D, 545, 36 Sup. Ct. Rep. 7, Ann. Cas. 1917 B, 283; Adams *v.* Tanner, 244 U. S. 590, 61 L. Ed. 1336, L. R. A. 1917 F, 1163, 37 Sup. Ct. Rep. 662, Ann. Cas. 1917 D, 973; New

York L. Ins. Co. *v.* Dodge, 246 U. S. 257, 62 L. Ed. 772, 38 Sup. Ct. Rep. 337, Ann. Cas. 1918 E, 593; Truax *v.* Corrigan, 257 U. S. 312, 66 L. Ed. 254, 27 A. L. R. 375, 42 Sup. Ct. Rep. 124; Adkins *v.* Children's Hospital (April 9, 1923) 261 U. S. 525, 67 L. Ed. 785, 24 A. L. R. 1238, 43 Sup. Ct. Rep. 394; Wyeth *v.* Board of Health, 200 Mass. 474, 23 L. R. A. (N. S.) 147, 128 Ann. St. Rep. 439, 86 N. E. 925.

The dicta in this case would appear to be somewhat broader than can be supported by the previous decisions of the United States Supreme Court which are cited to support it, as will be seen by a study of these decisions. There cannot be found in any of them or in any other decision ever rendered by the Supreme Court either any direct decision, or any expression of opinion, that the Fourteenth Amendment gives the Federal Courts any power to interfere between a State and its citizens relative to questions of religion, education, or domestic relations including the question of the division of the power of control over children between their parents and the state.

As to the first of these three matters the question has been directly decided to the contrary by the United States Supreme Court. See *Permoli* v. *First Municipality,* 3 Howard 309, 11 L. Ed. 739, in connection with the many decisions that the Fourteenth Amendment did not have the effect of making the first eight amendments limitations upon the powers of the States.

The reason why there have been no direct adjudications by the United States Supreme Court on the questions of Federal control over education or domestic relations is that these matters have been so uni-

versally recognized as being entirely within the field of state control that no one has previously considered it worth while to take up such a question for the adjudication of this court. Even the numerous lawyers who have held such extravagant ideas as to the extent of the application of the Fourteenth Amendment have never conceived the idea that it could be stretched to such an extent as this. It would be hard to name two subjects which by their inherent characters naturally fall more clearly within the jurisdiction of the states and outside of that of the Federal Government.

If the states are to be deprived of their powers over education and domestic relations it is hard to see what powers can be logically left to them, and they would appear to be on a rapid journey toward a political status similar to that of a British County.

The decision in the *Slaughter House Cases, supra,* conclude with the following words:

> "Whatever fluctuations may be seen in the history of public opinion on this subject during the period of our national existence, we think it will be found that this court, so far as its functions required, has always held, with a steady and an even hand the balance between State and Federal power and we trust that such may continue to be the history of its relation to that subject so long as it shall have duties to perform which demand of it a construction of the Constitution, or of any of its parts."

A continuation of this policy in deciding the present case, will protect the states from the most far-reaching attacks upon their powers and rights which have been made for many years. If the majority of the states,

now or at any time in the future feel that any state has abused its control over religion or education, the constitution provides one, and only one, remedy. This is the remedy which was used for the abolition of slavery and which is at present being sought for the matter of child labor.

Military service is not the only form of service, which a state can demand of its citizens.

> "In view of ancient usage and the unanimity of judicial opinion it must be taken as settled that unless restrained by some constitutional limitation, a state has inherent power to require every able-bodied man within its jurisdiction to labor for a reasonable time on public roads near his residence without direct compensation. This is a part of the duty which he owes to the public." (Butler *v.* Perry, 240 U. S. 326, 60 L. Ed. 672.)

Other forms of service, e. g., jury service, for which a state can call upon its citizens, will readily suggest themselves.

The demand of the state for a portion of the time of each child in order to prepare the child for the duties of good citizenship, is manifestly a far less onerous, but no less important, one than those above considered.

The subject of immigration is one which is exclusively under the control of the central government. The states have nothing to say as to the number or class of the immigrants who may be permitted to settle within their limits. It would therefore appear to be both unjust and unreasonable to prevent the states from taking the steps which each state may deem necessary and proper for Americanizing its new imigrants

and developing them into patriotic and law-abiding citizens.

The requirement of universal attendance in the public schools would seem to be clearly one of the methods within the discretion of the state for the accomplishment of this purpose.

In considering the necessity and propriety of such action it is necessary to consider not only the classes of private schools now in existence but also the kinds of private schools which may be established in the future.

At present the vast majority of the private schools in the country are conducted by members of some particular religious belief. They may be followed, however, by those organized and controlled by believers in certain economic doctrines entirely destructive of the fundamentals of our government.

If the Oregon School Law is held to be unconstitutional it is not only a possibility but almost a certainty that within a few years the great centres of population in our country will be dotted with elementary schools which instead of being red on the outside will be red on the inside.

Can it be contended that there is no way in which a state can prevent the entire education of a considerable portion of its future citizens being controlled and conducted by bolshevists, syndicalists and communists?

The exact question involved in the present case has never been passed upon by any American court. Perhaps the cases which come the nearest to touching the questions involved in this case are those on the question whether the school authorities have the right to exclusive control over the list of studies to be taken by pupils in the public schools or whether the parents have a limited right of selection. The decisions on this

question are in hopeless conflict. In New Hampshire (*Kidder* v. *Chelis*, 59 N. H. 473; Indiana (*State* v. *Webber*, 108 Ind. 31, 8 N. E. 708) and Iowa (*State* v. *Mizner*, 50 Ia. 145) it has been held that the power of the public is exclusive, while in Illinois (*School Trustees* v. *People*, 87 Ill. 303); Oklahoma (*School Board District* v. *Thompson*, 24 Okla. 1); and Wisconsin (*Morrow* v. *Wood*, 35 Wis. 59) some right of control has been held to belong to the parent.

In all of these cases, however, all parties have apparently agreed in holding that the state had at least a superior right in the matter, and that the question was one over which the state courts had exclusive jurisdiction. No attempt has ever been made to bring up any of these cases for review by the United States Supreme Court.

Attention is also again, in this connection, called to the case of *Eadleigh* v. *Newhall*, 136 Fed. 941, holding that parents have no right to the custody of their infant children, except subject to the paramount right of the state, to be exercised whenever deemed for the best interest of the children.

The Supreme Court of the United States has twice recently, in the child labor cases (*Hammer* v. *Dagenhart*, 247 U. S. 251, 62 L. Ed. 1101; and *Bailey* v. *Drexel Furniture Co.*, 259 U. S. 20, 66 L. Ed. 817) held that all questions relative to the care, control and custody of minor children belong exclusively to the state. In the former of these cases the court said:

> "In interpreting the Constitution it must never be forgotten that the nation is made up of states, to which are intrusted the powers of local government. And to them and to the people the powers not expressly delegated to the national govern-

ment are reserved. Lane County *v.* Oregon, 7 Wall. 71-76, 19 L. Ed. 101-104. The power of the states to regulate their purely internal affairs by such laws as seem wise to the local authority is inherent and has never been surrendered to the general government. Mayor, etc. of New York *v.* Miln, 11 Peters 102-139, 9 L. Ed. 648-662; Slaughter House Cases, 16 Wall. 36-63, 21 L. Ed. 394-404; Kidd *v.* Pearson, *supra.* To sustain this statute would not be in our judgment, a recognition of the lawful exertion of Congressional authority over interstate commerce, but would sanction an invasion by the Federal power of the control of a matter purely local in its character, and over which no authority has been delegated to Congress in conferring the power to regulate commerce among the states.

"We have neither authority nor disposition to question the motives of Congress in enacting this legislation. The purposes intended must be attained consistently with constitutional limitations, and not by an invasion of the powers of the states This court has no more important function than that which devolves upon it the obligation to preserve inviolate the constitutional limitations upon the exercise of authority, Federal and State, to the end that each may continue to discharge harmoniously with the other, the duties intrusted to it by the Constitiution.

"In our view the necessary effect of this act is, by means of a prohibition against the movement in interstate commerce of ordinary commercial commodities *to regulate the hours of labor of children* in factories and mines within the state—*purely state authority.*"

If the legislative department of the Federal Government cannot interfere in matters relative to child

labor, how can the judicial department of the Federal Government interfere in matters relative to the education of children?

Is the Supreme Court of the United States prepared to hold that four or five hours a day attendance at a public school during forty weeks in a year is a greater evil to a child than eight or ten hours a day work in a factory during perhaps every week in the year? Such an inference would be clearly included in a decision by the court holding the Oregon School Law unconstitutional.

The Oregon School Law does not deny the Equal Protection of the Law.

It is further charged that this amendment violates the constitutional provision that "no state . . . shall deny to any person within its jurisdiction the equal protection of the laws."

So far from there being any merit in this charge the truth of the matter is that the whole opposition to the new law arises from the fact that it is intended to bring about a greater equality in the operation of the school law of Oregon than has previously existed.

A law which increases the uniformity of the application of a law cannot by any stretch of the imagination be classed as a law which denies the equal protection of the law. The new Oregon School Law merely removes an exception to the generality of the application of the former law.

All state legislatures have the right to make exceptions to the application of a general law, provided such exceptions are based upon some logical and reasonable classification. Such power of classification, however, is a discretionary right and never a mandatory duty.

The right to the equal protection of the laws is not denied when it is apparent that the same law or course

of procedure is applicable to every other person in the state under similar circumstances and conditions.

Walston v. *Nevin*, 128 U. S. 582, 32 L. Ed. 544;
Tinsley v. *Anderson*, 171 U. S. 106, 43 L. Ed. 91, 18 Sup. Ct. Rep. 805;
Williams v. *Arkansas*, 217 U. S. 79, 54 L. Ed. 673, 30 Sup. Ct. Rep. 493.

The Decision in the District Court.

In the decision rendered in the District Court of Oregon the judges, after arguing the case mainly on the question of the deprivation of liberty wthout due process of law, in which discussion they avowedly proceed on the assumption that the Fourteenth Amendment protects the liberty of artificial persons equally with the liberty of natural persons, decide the case solely on the question of the deprivation of property without due process of law. Adding,

> "Other questions have been presented, but, their decision not being necessary to a determination of the controversy involved, they are not considered."

Apparently appreciating that their decision in this case was entirely without backing of any legal precedent, the judges declare in their opinion: "That the writ may be novel, or is without precedent, is not a fatal objection to its use."

The only judicial foundation for this position which they produce is a half sentence of dicta, boldly torn from its context and stripped of the explanatory and qualifying statements which surround it, from an early Illinois case which decided that equity courts had the

power to order the sale of a lunatic's real estate. *Dodge* v. *Cole*, 97 Ill. 338, 364, 37 Am. Rep. 111.

This is supplemented by a single sentence from Corpus Juris which is quoted as if it was a statement of a general principle, while in reality it is used in Corpus Juris as a qualifying statement in connection with a preceding general statement.

This can be perhaps best shown by quoting the whole section from Corpus Juris with the portion cited in the decision of this case in the District Court underlined.

> "While it has been said that the writ of injunction will not be awarded in new and doubtful cases not coming within the well established principles of equity, yet the absence of precedent, although not to be overlooked entirely does not of itself determine questions of jurisdiction. It is not a fatal objection that the use of the writ for the particular purpose for which it is sought is novel. *Courts may amplify remedies and apply rules and general principles for the advancement of substantial justice.* If this was not so, and courts were confined to particular precedents, there would be no power to grant relief in new cases constantly occurring." 32 Corpus Juris N. 34, No. 13.

One case only is cited in Corpus Juris in support of the principle stated in the sentence cited in the opinion in the lower court. This is the case of *Hamilton* v. *Whitridge*, 11 Maryland 128, 69 American Decisions 184, where an injunction was sought against the opening of a house of prostitution. The opinion in this case was in part as follows:

> "As was observed by the appellant's counsel, no decision has been found in which the power

was exercised in such cases as the present. Nor is there any in which the writ of injunction had been applied for and denied. But the absence of precedents, though not to be overlooked entirely, does not, of itself determine questions of jurisdiction. We consult adjudged cases to ascertain their reason and spirit. These are the foundation of the law. Salmon *v.* Clagett, 3 Bland 133; Fisher *v.* Prince, 3 Burr 1364; Rust *v.* Cooper, Cowp. 632.

"Courts are not to assume jurisdiction, but they may employ remedies and apply rules and general principles for the advancement of substantial justice. Broom's Leg. Max. 36; 50 Law Lib. 50; Russell *v.* Smyth, 9 Mee. & W. 818, per Lord Abinger. If this were not so, and courts were confined to particular precedents, there would be no power to grant relief in new cases constantly occurring. And hence, when they do arise, and rights can be asserted or wrongs prevented or redressed consistently with established principles, it would be a great failure of justice to deny relief merely because no decision could be found in which the jurisdiction has been invoked and exercised. The point on this appeal, then, is not whether an injunction has ever issued, to prevent the establishment of a public nuisance of this kind, but whether the doctrines of equity applicable to nuisances should be applied to the present case".

The citations, therefore, relied upon which the decision in the District Court are partly based merely go to the extent of holding that where equity jurisdiction is clearly established in a general class of cases, it may be granted in cases the exact facts on

which have never arisen in a previous case, but which fall within the general class.

This appears as a slim foundation for a decision which would strip a state of such large fields of jurisdiction which have previously been conceded to them.

The point here raised by the District Court is, moreover, entirely immaterial, as the question is not as to the extent of the jurisdiction of the court as an equity court, but as to the extent of the jurisdiction of the court as a Federal court.

If the Compulsory School Laws of the Other States of the United States are Constitutional, the New Oregon School Law must be held Constitutional.

In its decision in *Meyer* v. *Nebraska,* 262 U. S. 390, 67 L. Ed. 1042, the Supreme Court said: "The power of the state to compel attendance at some school and to make reasonable regulations for all schools, including a requirement that they shall give instructions in English, is not questioned. Nor has challenge been made of the state's power to prescribe a curriculum for institutions which it supports."

Apparently no one has yet disputed the truth of the legal principles contained in this citation. A careful analysis of the above statement shows that it sustains the constitutionality of the new Oregon School Law.

Classification in a state statute is a right possessed by a state which they may exercise at their discretion; it is not a duty forced upon them.

If a state may pass a law applying to a certain portion of the things or persons included in a general class, it can pass one applying to all in a general class, unless express exceptions are to be found in the prohibitions in the Federal Constitution.

This has been positively decided by the United States Supreme Court. In *Fisher* v. *St. Louis,* 194 U. S. 361, 48 L. Ed. 965, the Court said:

> "Defendant's objection to ordinance, that it is made to apply to the whole city, when authority was only given by the charter to prohibit the erection of cow stables and dairies 'within prescribed limits', is equally without foundation. If it were possible to prescribe limits for the operation of the ordinance it was held by the Supreme Court to be equally possible to declare that those limits should be coincident with the limits of the city. This is also a non-Federal Question."
>
> Again in Truax *v.* Raich, 239 U. S. 33, 60 L. Ed. 131, the court said: "We have frequently said that the legislature may recognize degrees of evil and adapt its legislation accordingly, but underlying the classification is the authority to deal with that at which the legislation is aimed."

The states do not hold any power solely in the alternative. This idea of alternative power is absolutely necessary to sustain the position of the defendants in error, but such an idea has been hitherto unheard of in constitutional law or in the common law.

If a state has the power to command its citizens to do one of two things this is, and can only be, because it could compel them to do either, or because, at the very least, it has the right to compel absolutely and unconditionally one of these things, and offers the other as an optional course of conduct.

Even the opponents of the Oregon School Law could hardly contend that existing compulsory school attendance laws are constitutional on the theory that the State has the right to compel universal attendance

at private schools, and merely offers to accept attendance at the public schools as an optional substitute. The lack of any certainty as to the universal availability of private schools is enough to show the impossibility of relying on this theory. Laws compelling compulsory attendance at school were never adopted, either in this country or in England, before the creation of a public school system. But if this theory is to be rejected, the only alternative theory, upon which any kind of a compulsory school law can be sustained, is the adoption of the principle that a state can compel universal attendance of children of school age at the public schools and may offer to accept attendance at a private school as an optional substitute.

The amazing theory that a state may compel people to do one of two things when it could not compel them to do either one by itself, is a new legal principle without support either in the United States Constitution, the Common Law, or the fundamental principles of jurisprudence, which the defendants in error in this case are asking the Supreme Court to create for the purposes of this particular case.

Affirmative Defence of the Oregon School Law.

Not only can the new Oregon School Law be successfully defended against all the allegations of unconstitutionality which have been made against it, but it can also be affirmatively defended not only as a proper exercise of one of those powers expressly reserved to the States by the Tenth Amendment, but also both as a proper exercise of the police power of the state, and of the powers of the state in connection

with its duties to aid the United States in time of war.

(A) The constitutionality of the new Oregon Public School Law can be sustained as an exercise of the police power of the State. The United States Supreme Court has repeatedly decided that the scope of this power is a very broad one.

Thus Mr. Justice Harlan in delivering the opinion of the Supreme Court in the case of *Chicago, B. & Q. R. Co.* v. *Illinois*, 200 U. S. 561, 592, 50 L. Ed. 596, 609, 26 Sup. Ct. Rep. 341, said in relation to the scope of the police power:

> "The learned counsel for the railway company seem to think that the adjudications relating to the police powers of the state to protect the public health, the public morals, and the public safety are not applicable, in principle, to cases where the police power is exerted for the general wellbeing of the community apart from any question of the public health, the public morals, or the public safety. Hence, he presses the thought that the petition in this case does not, in words, suggest that the drainage in question has anything to do with the health of the drainage district, but only avers that the system of drainage adopted by the Commissioners will reclaim the lands of the district, and make them tillable or fit for cultivation. We cannot assent to the view expressed by counsel. We hold that the police power of a state embraces regulations designed to promote *the public convenience or the general prosperity*, as well as regulations designed to promote the public health, the public morals, or the public safety." Citing Lake Shore & M. S. R. Co. *v.* Ohio, 173 U. S. 285, 292, 43 L. Ed. 702, 704, 19 Sup. Ct. Rep. 564; Silman *v.* Philadelphia, 3 Wall. 713, 729, 18 L. Ed. 96, 100; Pound *v.* Turck, 95 U. S. 269, 274, 24 L. Ed.

525, 527; Hannibal, St. J. R. Co. *v.* Husen, 95 U. S. 470.

In *Bacon* v. *Walker,* 204 U. S. 311, 51 L. Ed. 499, the United States Supreme Court referred to the case of *Chicago, B. & Q. R. Co.* v. *Illinois,* 200 U. S. 561, 592, 50 L. Ed. 596, 609, 26 Sup. Ct. Rep. 341, and continued:

> "In that case we rejected the view that the police power cannot be exercised for the general well-being of the community. That power, we said embraces regulations designed to promote the public convenience or the general prosperity, as well as regulations designed to promote the public health, the public morals or the public safety."

Again in *Lewton* v. *Steele,* 153 U. S. 135, 382 L. Ed. 385, it was said:

> "The extent and limits of what is known as the police power have been a fruitful subject of discussion in the appellate courts of nearly every state in the Union . . . Under this power it has been held that the state may order . . . the compulsory vaccination of children."

In the case of *Mayor, etc. of New York* v. *Miln* (11 Peters 102, 9 L. Ed. 648), already referred to, Mr. Justice Thompson, one of the justices upholding the decision of the majority of the court, said:

> "Can anything fall more directly within the police power and internal regulation of a State than that which concerns the care and management of paupers or convicts, or any other class or description of persons that may be thrown into the country, and likely to endanger its safety, or become chargeable for their maintenance? It is not intended by this remark to cast any re-

proach upon foreigners who may arrive in this country. But if all power to guard against these mischiefs is taken away, the safety and welfare of the community may be very much endangered."

In connection with this last quotation it may be asserted that no class of persons are so "likely to endanger its safety, or become chargeable for their maintenance" as those who have been left uneducated or been improperly educated.

(B) This law may also be sustained under the powers of the state in connection with its duties to aid the United States in time of war. The right of the United States to call upon its citizens for military services to any extent for the wars waged by the United States, either at home or abroad, was strongly asserted by the United States Supreme Court in a line of decisions rendered during the recent war.

Arver v. *United States,* 245 U. S. 366, 52 L. Ed. 349;

Holdman v. *United States,* 245 U. S. 474, 62 L. Ed. 410;

Ruthenberg v. *United States,* 245 U. S. 480, 62 L. Ed. 414;

Cox v. *Wood,* 247 U. S. 3, 62 L. Ed. 947;

Frohwerk v. *United States,* 249 U. S. 204, 63 L. Ed. 54;

Debe v. *United States,* 249 U. S. 211, 63 L. Ed. 666;

McKinley v. *United States,* 249 U. S. 397, 63 L. Ed. 668.

The power to declare war is exclusively in the United States government, *but the power and duty to keep in a state of preparedness for war is shared by the state governments.*

In *Gilbert* v. *Minnesota,* 254 U. S. 325, 65 L. Ed. 257, the United States Supreme Court was called upon to pass on the constitutionality of a statute of Minnesota providing, in part, that:

> "It shall be unlawful for any person to *teach* or advocate by any written or printed matter whatsoever, or by an oral speech, that the citizens of this state should not aid or assist the United States in prosecuting or carrying on war with the public enemies of the United States."

In the decision upholing the constitutionality of this statute, it was said by the court:

> "Undoubtedly, the United States can declare war, and it, not the states, has the power to raise and maintain armies. But there are other considerations. The United States is composed of the states, the states are constituted of the citizens of the United States, who also are citizens of the states, and it is from these citizens that armies are raised and wars waged, and whether to victory and its benefits, or to defeat and its calamities, the states as well as the United States are ultimately concerned. And whether to victory or defeat depends upon their morale, the spirit and determination that animate them,—whether it is repellent and adverse or eager and militant,—and to maintain it eager and militant against attempts at its debasement in aid of the enemies of the United States is a service of patriotism, and from the contention that it encroaches upon or usurps any power of Congress, there is an instinctive and immediate revolt. And so with the statute of Minnesota. An army is an instrument of government, a necessity of its power and honor, and it may be, of its security. An army, of course, can only be raised and directed by Congress; in

neither has the state power, but it has power to regulate the conduct of its citizens, and to restrain the exertion of baleful influence against the promptings of patriotic duty, to the detriment of the welfare of the nation and state. To do so is not to usurp a national power, it is only to render a service to its people, as Nebraska rendered a service to its people when it inhibited the debasement of the flag."

In *Halter* v. *Nebraska* (205 U. S. 34, 51 L. Ed. 696), the United States Supreme Court, in upholding the constitutionality of an act of the State of Nebraska prohibiting the use of the United States flag for advertising purposes, said in part:

"So, a State may exert its power to strengthen the bonds of the Union, and therefore, to that end, may encourage patriotism and love of country among its people. When, by its legislation, the state encourages a feeling of patriotism towards the nation, it necessarily encourages a like feeling toward the state. One who loves the Union will love the state in which he resides . . .

"As the statute in question evidently had its origin in a purpose to cultivate a feeling of patriotism among the people of Nebraska, we are unwilling to adjudge that in legislation for that purpose the state erred in duty, or has infringed the constitutional right of anyone. On the contrary, it may reasonably be affirmed that a duty rests upon each state in every legal way to encourage its people to love the Union with which the state is indissolubly connected. . . .

"It would be going very far to say that the statute in question had no reasonable connection with the common good and was not promotive of the peace, order, and well-being of the people.

> Before this court can hold that statute void it must say that, and, *in addition,* adjudge that it violates rights secured by the constitution of the United States. We cannot so say and cannot so adjudge."

The discretion of the states in the exercise of their powers is broad enough to justify a state in holding that a compulsory system of public school education will encourage the patriotism of its citizens, and train its younger citizens to become more willing and more efficient defenders of the United States in times of public danger.

This is particularly true in view of the fact that if the Oregon School Law is declared unconstitutional there will be nothing to prevent the establishment of private schools, the main purpose of which will be to teach disloyalty to the United States or at least the theory of the moral duty to refuse to aid the United States even in the case of a defensive war.

CONCLUSION.

In the preceding sections it has been shown:

I. That the Governments of the several states in the Union possess all those governmental powers which they have not surrendered by the United States Constitution;

II. That the New Oregon Public School Law is not a violation of any provision in the United States Constitution; and

III. That the passage of the Act in question can be sustained under any one of two great rights or groups of rights, possessed by the governments of each of the states.

In conclusion it is only necessary to say a word concerning the great, and far reaching, evils which

would result from a decision declaring the law in question to be unconstitutional and void.

If the governments of the several states have no power to provide for the education of the children within its limits, and if the character of the education of such children is to be entirely dictated by the parents of such children, or by those persons by whose influence the parents are controlled, it is hard to assign any limits to the injurious effect, from the standpoint of American patriotism which may result. For example children may be taught that their true allegiance is to some country other than the United States, that the claims upon them of the religion to which they belong are superior to the claims of the United States, that it is wrong to take up arms in defence of the United States, that the Government of this country is a wicked and tyrannical one, or they may be intentionally mistaught as to the true character of the government and history of the United States. The extreme distortions of truth on these subjects which have been circulated throughout the United States in recent years would be ludicrous if they were not so tragic.

Moreover, if the new Oregon School Law is declared to be in violation of the Constitution of the United States there is no legal principle on which any existing public school law in the United States can be upheld. If a state cannot compel certain children to attend the public schools it cannot compel any children to do so. An attempt to do so would be clearly a violation of the "equal protection of the laws" clause of the Fourteenth Amendment.

While proper classification of the subjects to which a law is to apply may be constitutional, a law which

is unconstitutional without classification cannot be made constitutional by classification, with the single exception of cases where the classification is based upon the division of powers between the state and Federal governments.

The whole matter may be summed up in the single statement that the regulation of education is a subject over which the states have exclusive control and with which the Federal government has no authority to interfere. If there is anything objectionable with a state law on the subject of education the remedy must be sought in the state courts or by action of the state electorate. It is a problem which each state must, and should, be left to settle for itself. Local conditions in a few states may render laws necessary or advisable which would be unnecessary and inadvisable in the other states. Particularly should a question of such delicacy as the present one be left for each state to decide for itself. If this question is brought within the field of Federal control it can only mean the spread of this bitter question all over the United States in the conflict over another proposed amendment to the Constitution. The court might almost take judicial notice of the certainty of the introduction of such an amendment in case the Oregon Law is declared unconstitutional. It is to be hoped that some vestiges of sovereign power may continue to be left to the state governments.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1924.

No. 583.

WALTER M. PIERCE, as Governor of the State of Oregon; ISAAC H. VAN WINKLE, as Attorney General of the State of Oregon, and STANLEY MYERS, as District Attorney for Multnomah County, State of Oregon, *Appellants*,

vs.

THE SOCIETY OF THE SISTERS OF THE HOLY NAMES OF JESUS AND MARY, *Appellee*.

No. 584.

WALTER M. PIERCE, as Governor of the State of Oregon; ISAAC H. VAN WINKLE, as Attorney General of the State of Oregon, and STANLEY MYERS, as District Attorney for Multnomah County, State of Oregon, *Appellants*,

vs.

HILL MILITARY ACADEMY, *Appellee*.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON.

SUPPLEMENT TO BRIEF OF APPELLANT, THE GOVERNOR OF THE STATE OF OREGON.

AMBIGUOUS AND POSSIBLY MISLEADING STATEMENT IN BRIEF OF APPELLEE, THE SOCIETY OF THE SISTERS OF THE HOLY NAMES OF JESUS AND MARY.

In the above mentioned brief the following statement is made on page 71: "In Taylor and Marshall *v.* Beckham (No. 1), 178 U. S. 548, 602-3, Mr. Justice Harlan said: etc." While this statement is technically correct the counsel failed to explain (presumably through oversight) that the

opinion of Mr. Justice Harlan was a dissenting opinion in which no other justice concurred. Even the other justice who dissented in this case did not give his approval to the extreme view of the law contained in the quotation from Mr. Justice Harlan's opinion which is quoted in the above mentioned brief.

ERRONEOUS STATEMENTS CONTAINED IN THE BRIEF OF APPELLEE, HILL MILITARY ACADEMY.

On page 26 of this Brief it is stated: "The reports of the Bureau of Education of the Department of the Interior of the United States, show a total enrollment in all private schools of 184,153. Of this number, 130,019 were in private schools conducted by religious denominations."

The facts of the case are that the "Bi-Annual Survey Bulletin, 1918-20," published by the Bureau of Education of the Department of the Interior of the United States, gives the following totals for the attendance at the time of the compilation of the bulletin in private schools, below collegiate grade, in the United States:

Elementary Schools.....	1,485,561
Secondary Schools.....	213,920
Commercial & Business Schools...	335,161
	2,034,642

This total is a little more than eleven times the number stated in appellee's brief.

More serious mistakes, which apparently arise out of a misunderstanding of the appellant's brief, are found in the following quotations from appellee's brief:

> "The Governor and Attorney General, while admitting that the purpose of the act is to compel attendance at public schools *and thus prevent children from attending private schools*, etc." page 11.

> "No interpretation can be placed upon this act other than it is intended to prevent children between the ages of eight and sixteen years and in the elementary grades from attending private schools. That is its plain meaning and intent *and that is the interpretation placed upon it by appellants in this case.*" page 14.

This most emphatically is *not* the interpretation placed upon this statute by the appellants. The attitude, on this point, of the appellant Walter M. Pierce is set out in the last 15 lines of p. 41 and the first two lines of page 42 of the brief filed in his behalf.

The State of Oregon has never claimed and does not claim any monopoly in the education of any child under its jurisdiction.

The new Oregon School Law does not deprive any parent of the right to have his views on religion, or any other subqect, taught to his child by any teacher he may select.

The law does guarantee the privilege and right of every child to receive a *portion* of his education under such environments as will render it free from class or religious bias.

It is argued in both briefs filed in behalf of the appellees that supplemental education would be impossible under the new Oregon School Law. The truth of the matter is, however, that the practicability of supplemental schools for religious education, working in co-operation with the public schools, or by the side of the public schools, has been so well established by practical experience as to be no longer a matter of doubt or speculation. Hundreds, probably thousands, of such schools are today in successful operation; and the number is being increased almost daily. Those who seek to create a monopoly of education are to be found among the opponents, not the supporters, of the new Oregon School Law.

Attention is called to the following ambiguous and perhaps misleading statement which is advanced in the brief of counsel for The Society of the Sisters of the Holy Names of Jesus and Mary as an (at page 78) argument to show that supplemental schools, or instruction in connection with the public schools would be impossible: "In Meyer *v.* Nebraska, 262 U. S. 390, 398, the following was quoted from the court below: 'The hours which a child is able to study in the confinement of school are limited. It must have ample time for exercise or play. Its daily capacity for learning is comparatively small.' "

While this is a portion of a quotation made by the Su-Supreme Court from the decision of the court below, attention is called to the fact that the Supreme Court made this quotation from the decision of the state court for the purpose of recording its disapproval of it.

THE IMPAIRMENT OF THE OBLIGATION OF CONTRACTS.

Counsel for the Hill Military Academy does not seriously raise the question in this Court of the impairment of the obligation of contracts, saying (pp. 2 and 3 of his brief): "The bill of complaint in this case alleges that the act in question is unconstitutional and void in several particulars, but in presenting the case to the lower court, this appellee relied wholly upon the proposition that the act is in violation of section 1 of the Fourteenth Amendment to the Constitution of the United States, in that it deprives this appellee of its property without due process of law. We rely upon that ground in this court."

On the other hand, counsel for the appellee, The Society of the Sisters of the Holy Names of Jesus and Mary, attempt to argue that the statute impairs the obligation of the contract embodied in the plaintiff's corporate charter, basing this position upon the decision in the *Dartmouth College* case.

The rule in the *Dartmouth College* case is too well known to need discussion, but equally well known and authentic is the limitation, or perhaps better the explanation, of this rule which was set out by this Court in the cases of, *The Provident Bank* v. *Billings & Pittman,* 4 Pet, 514, 7 L. ed. 934, and *The Charles River Bridge* v. *The Warren Bridge,* 11 Pet. 420, 9 L. ed. 773.

In these cases this Court laid down the doctrine, never since abandoned, that the obligation of the charter of a corporation was not impaired by any loss, however serious or certain, which a corporation might suffer as the indirect result of the exercise of a proper governmental function by the State which chartered it.

In the latter of these cases, the Court said:

> "The continued existence of a government would be of no great value, if by implications and presumptions, it was disarmed of the powers necessary to accomplish the ends of its creation, and the functions it was designed to perform, transferred to the hands of privileged corporations. The rule of construction announced by the court (i. e. in The Provident Bank *v.* Billings & Pitman, 4 Pet. 514) was not confined to the taxing power, nor is it so limited in the opinion delivered. On the contrary, it was distinctly placed on the ground that the interests of the community were concerned in preserving undiminished, the power then in question; and whenever any power of the State is said to be surrendered or diminished, whether it be the taxing power or any other affecting the public interest, the same principle applies and the rule of interest must be the same."

This is closely connected with the doctrine that a State cannot contract away by charter its police powers. See *Northwestern Fertilizer Co.* v. *Hyde Park,* 97 U. S. 672, 24 L. ed. 1040, and *Stone* v. *Mississippi,* 101 U. S. 819, 25 L. ed. 1080.

The attempt to differentiate the present case from the case of *Berea College* v. *Kentucky,* on account of the difference in the corporation laws of Oregon and Kentucky, completely fails in view of the decision of this Court in the case of *The Oregon Railway & Navigation Company* v. *The Oregon Railway Company,* 130 U. S. 1, 32 L. ed. 837, in which the Court construed the provision of the Oregon Constitution, upon which the appellee bases his argument, very strongly in favor of the preservation of the rights of the State, and against the presumption of vested interests in favor of the corporation.

DEPRIVATION OF PROPERTY WITHOUT DUE PROCESS OF LAW.

The great legal principle laid down in the case of *The Charles River Bridge* v. *Warren Bridge, supra,* applies with equal force where it is claimed that a state law deprives a person of property without due process of law. No person can be held to be deprived of property without due process of law by any loss which he may suffer as the indirect result of the exercise of a proper governmental function by a State, regardless of how certain or how serious this loss may be.

This is clearly shown by the decision in the case of *Laurel Hill Cemetery* v. *City & County of San Francisco,* 216 U. S. 358, 54 L. ed. 515.

The facts in this case were set out in the decision as follows: "This is an action to restrain the City and County of San Francisco and its officers from enforcing an ordinance forbidding the burial of the dead within the city and county limits. The allegations of the complaint are lengthy, but the material facts set forth are as follows: The plaintiff was incorporated in 1867 as a rural cemetery under a general act. The land in question had been dedicated as a burying ground, being at that time outside the city limits, and a mile or two away from dwellings

and business. It was conveyed to the plaintiff and later a grant of the same was obtained from the city in consideration of $24,139.79, which sum the city retains. The land has been used as a cemetery ever since; forty thousand lots have been sold, and over two million dollars have been spent by the lot owners, and other large sums by the plaintiff, in preparing and embellishing the grounds. By the terms of the above-mentioned general statute the lots, after a burial in them, are inalienable, and descend to the heirs of the owner, and the plaintiff is bound to apply the proceeds of sales to the improvement, embellishment, and preservation of the grounds. There is still land unsold, estimated to be worth $75,000. There now are many dwellings near the cemetery, but it is alleged to be in no way injurious to health, or offensive, or otherwise an interference with the enjoyment of property or life."

It would be hard to imagine a case where the necessary effect of a law was to more clearly destroy the value of property.

Nevertheless the Court unanimously held that the plaintiffs in error had not been deprived of property without due process of law.

The decision was largely based on the well-established principle that the Supreme Court will not hold a state law unconstitutional because of the personal opinions of the members of the Court as to the wisdom, justice or exediency of the law. On this point the Court said in this decision: "If every member of this bench clearly agreed that burying grounds were centers of safety, and thought the board of supervisors and the supreme court of California wholly wrong, it would not dispose of this case. There are other things to be considered. Opinion still may be divided, and if, on the hypothesis that the danger is real, the ordinance would be valid, we should not overthrow it merely because of our adherence to the other belief."

THE FOURTEENTH AMENDMENT DOES NOT PROTECT RIGHTS ARISING OUT OF FAMILY RELATIONS.

The counsel for the appellee, The Society of the Sisters of the Holy Names of Jesus and Mary, contend for a construction of the "due process of law" clause of the Fourteenth Amendment which would bring within its protection every right belonging to man. Broad, however, as the scope of this clause undoubtedly is, it cannot be stretched far enough to satisfy the contention of this appellee. It is now well settled that it does not protect political rights. Another great class of rights which would appear to be just as clearly outside the scope of this clause are those arising out of the family relations, including the rights of parents over their children. This is one class of rights which the Constitution leaves in its entirety to state regulation and state protection.

That the right of a parent to control the education of his children is a property right is not contended by the appellee; but just as untenable is its claim that it is a part of his "liberty" which is protected by the Fourteenth Amendment.

A parent beyond dispute has an important "right" in his power of control over his children, a right which is fully protected by the laws of the different States; but it is a strange perversion of the meaning of the word "liberty" to apply it to a right to control the conduct of others.

This distinction is well brought out by Mr. Cooley, who in his "Treatise on the Constitutional Limitations," refers to the rights which arise out of the family relations, and in particular the right of control of a parent over his child, not as liberties but as "legal *restraints* upon personal liberty." (See edition of 1868, pp. 339-342.)

While the United States Supreme Court has never expressly stated that rights arising out of the family relations were not protected by the "due process of law" clause,

it has tacitly indicated this by its treatment of the divorce cases which have come before it.

In *Andrews* v. *Andrews,* 188 U. S. 14, 32, 47 L. ed. 366, 369, the Court said: "Now, as it is certain that the Constitution of the United States confers no power whatever upon the government of the United States to regulate marriage in the states, or its dissolution, the result would be that the Constitution of the United States has not only deprived the states of power on the subject, but while doing so has delegated no authority in the premises to the government of the United States."

Both in this case and also in the case of *Haddock* v. *Haddock,* 201 U. S. 562, 50 L. ed. 867, the Supreme Court held that there was a lack of jurisdiction in the court which rendered the decree of divorce. If, therefore, these had been cases where "life, liberty, or property" had been involved the court would have held that there had been a denial of "due process of law" and that the judgment of the court was void. In these cases, however, the court did not attempt to apply the provisions of the Fourteenth Amendment and merely decided that the lack of jurisdiction excused the courts of other States from the necessity of recognizing the validity of such judgments under the compulsion of the "full faith and credit" clause of the Constitution. A decision under the "due process of law" clause would have prevented the existing state of confusion as to marriage laws, under which a person may be single in one state and married in another, and it seems safe to assume that these cases would have been decided under this clause had it been possible.

How clearly the rights arising from family relations lacks the protection given to most other civil rights by the Fourteenth Amendment, is indicated by the following extract from the opinion in the case of *Haddock* v. *Haddock, supra,* "Indeed, a personal judgment so rendered is, by operation of the "due process" clause of the 14th Amend-

ment, void as against the nonresident, even in the state where rendered and, therefore, such nonresident, in virtue of the rights granted by the Constitution of the United States, may successfully resist, even in the state where rendered, the enforcement of such a judgment. Pennoyer *v.* Neff, 95 U. S. 714, 24 L. ed. 565."

The Supreme Court in these decisions held that it had itself no power to protect marital rights against state statutes or the decisions of state courts; it may be properly deduced from this that the same principle will apply in the case of the protection of parental rights.

The counsel for The Society of the Sisters of the Holy Names of Jesus and Mary rely to a very great extent, for the support of their view as to the scope of the application of the "due process of law" clause of the Fourteenth Amendment upon the quotations which they give from two dissenting opinions of Mr. Justice Harlan.

The view of Mr. Justice Harlan is that of the dissenting justices in the *Slaughter House* cases, and represents a view as to the character of the Fourteenth Amendment which has been often presented to this Court and always repudiated by it. These dissenting opinions represent not what the law *is*, but what this Court has repeatedly decided it is *not*.

THE CRY OF BOLSHEVISM.

Both absurd and unjustifiable is the attempt in the brief last referred to, to compare the new Oregon School Law with the legislation of Soviet Russia.

If there is anything which can cause the great mass of the people of this country to lose their fear of "Bolshevism," it is the growing habit to apply this term to any law which tends to injuriously affect any powerful special interest.

This term was applied with great vigor and persistency to the recent novel economic laws adopted by the State of North Dakota, but this Court, utterly disregarding such childish argument, upheld all these laws in the case of *Green* v. *Frazier*, 253 U. S. 233, 64 L. ed. 878. In the course of its decision in this case the Court said: "Questions of policy are not submitted to judicial determination, and the courts have no general authority of supervision over the exercise of discretion which, under our system, is reposed in the people or other departments of government. . . . With the wisdom of such legislation, and the soundness of the economic policy involved, we are not concerned. Whether it will result in ultimate good or harm it is not within our province to inquire."

THE CHARGE OF LIBEL AGAINST THE ROMAN CATHOLICS.

Without any basis in fact is the charge (contained on p. 22 of the brief of counsel for The Society of the Sisters of the Holy Names of Jesus and Mary) that the brief of the appellant contained an "inexcusable and cruel . . . libel" against the Roman Catholics.

No charge against any religion is contained in that brief, and no religion is specially referred to. The attorneys for the Governor of Oregon have attempted to argue this question strictly as a question of constitutional law, and contend that it should be argued on this basis by the attorneys for the appellees, and that it should and will be decided solely on this basis by this Court.

It is a contention of the appellants, however, that the Supreme Court, according to its previous decisions, must uphold a state statute if there are any possible conditions under which it might be necessary and proper. In connection with this contention certain hypothetical conditions were set out which would clearly render a law of the character of the Oregon School Law necessary and proper.

After reading the official arguments in support of this law (which the appellee furnishes on pp. 24, 25 of Appendix 1 of his brief) and the figures of the vote on its adoption, it is evident that a majority of the voters of Oregon believed that the general welfare of the State would be promoted by compelling all children (with some slight exceptions) to receive a certain amount of education in the public schools of the State. We believe that the opinion of these voters as to the propriety of such a law is binding upon the courts regardless of the personal opinions of the individual judges or justices thereof as to the wisdom of such a law.

GENERAL SCOPE OF ARGUMENTS IN BRIEFS OF APPELLEES.

While the question of the wisdom of the Oregon School Law is manifestly not before this Court, the greater part of the brief for The Society of the Sisters of the Holy Names of Jesus and Mary, and the whole of the "Brief Amici Curiae on Behalf of the Domestic and Foreign Missionary Society of the Protestant Espicopal Church," are devoted to arguments which relate to the wisdom and not to the constitutionality of the law.

It is contended by the appellants that all arguments of this character should be entirely disregarded by the Court.

When the attorneys for any of the appellees argue their case from a strictly legal standpoint, it is to be noted that the authorities upon which they principally rely are dissenting opinions, or detached sentences of dicta. No single final decision of this Court has been cited in any of their briefs which can be legitimately construed as supporting any of the grounds upon which the Oregon School Law is alleged to be unconstitutional.

In particular no decision has been cited which holds that the "due process of law" clause in the Fourteenth

Amendment protects rights arising out of family relations, or that the obligation of a contract is impaired or property taken without due process of law through the indirect loss to a private corporation as the result of the exercise of a proper governmental function.

In closing reference is made to the following statement found on pp. 68-9 of the brief of counsel for The Society of the Sisters of the Holy Names of Jesus and Mary:

> "Only recently a revolting murder was perpetrated for sport and in cynical disregard of all that was right by two educated young sons belonging to respectable families, and the public prints throughout the land proclaimed the fact that these young assassins, although amply educated otherwise by parents of large means, had had no religious or moral training worthy of the name."

The fact was that these young men had been educated in private schools.

Respectfully submitted,

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No. 583

Supreme Court of the United States

OCTOBER TERM, 1924

WALTER M. PIERCE, AS GOVERNOR OF THE STATE OF OREGON; ISAAC H. VAN WINKLE, AS ATTORNEY GENERAL OF THE STATE OF OREGON, AND STANLEY MYERS, AS DISTRICT ATTORNEY FOR MULTNOMAH COUNTY, STATE OF OREGON,

Appellants,

vs.

THE SOCIETY OF THE SISTERS OF THE HOLY NAMES OF JESUS AND MARY,

Appellee.

BRIEF ON BEHALF OF APPELLEE

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON

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Appellants,

vs.

THE SOCIETY OF THE SISTERS OF THE HOLY NAMES OF JESUS AND MARY,

Appellee.

BRIEF ON BEHALF OF APPELLEE

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON

This case comes before the Court on appeal from the District Court of the United States for the District of Oregon to review an order granting the appellee an interlocutory injunction against the enforcement, or threatened or attempted enforcement, of an initiative measure passed by the people of Oregon at the general election held November 7, 1922. The sole question involved is the constitutionality of that law.

Statement

The appellee is an educational corporation. It was incorporated under the laws of the State of Oregon, and by its charter it was granted the following authority and franchise:

> "The care of orphans, and the education and instruction of youth, and to establish and maintain academies or schools for the care and education of youth in the cities and towns of the State of Oregon."

In the exercise of this franchise the appellee for more than forty years has conducted and maintained private primary schools in the State of Oregon. It owns and conducts five schools of primary instruction which are attended by 765 children between the ages of eight and sixteen years. It owns buildings and equipment of large value which are devoted exclusively to these schools. Four of these are boarding schools in which many children who are orphans, or who have but one parent living, make their homes while receiving their education.

The appellee also conducts seven primary schools in buildings which it does not own, commonly called parochial schools, with a daily attendance of 1,115 children between the ages of eight and sixteen years. And it owns and conducts one orphanage in which 100 children within the same ages receive primary instruction.

In all of the schools the appellee teaches the same

subjects during the same hours and on the same days that those subjects are taught in the public schools of the state. In all things it conforms to the standards and methods of education prescribed by the laws of the State of Oregon. In addition to the subjects taught in the eight primary grades of the public schools, the appellee provides, as a part of the daily instruction, courses in religious instruction and moral training in accordance with the doctrines and moral teaching of the Roman Catholic Church. (Transcript, pp. 2-5.)

Before November 7, 1922, there was in force in the State of Oregon a compulsory education law, and on that day this law was amended by an initiative measure to compel all children in the primary grades between the ages of eight and sixteen years to attend the public schools of the State. The original law and the amendment are as follows:

ORIGINAL LAW

Sec. 5259. *Children Between the Ages of Nine and Fifteen Years*—Every parent, guardian or other person in the State of Oregon having control or charge of any child, or children between and including the ages of nine and fifteen years of age, shall be required to send such child or children to the public

AMENDMENT

Sec. 5259. *Children Between the Ages of Eight and Sixteen Years*—Any parent, guardian or other person in the State of Oregon, having control or charge or custody of a child under the age of sixteen years and of the age of eight years or over at the commencement of a term of public school of the dis-

schools for a term or period of not less or more than the number of months of public school held annually in the district in which such parent, guardian or other person in parental relation may reside; provided, that in the following cases, children shall not be required to attend public schools:

(a) *Children Being Taught in Private School* —Any child, or children, who is or are being taught for a like period of time in a private or parochial school such branches as are usually taught in the first eight years in the public schools, or has, or have, already acquired the ordinary branches of learning taught in such schools, the fact of which acquisition of such ordinary branches of learning by such child, or children, shall be determined by the school board in charge of the public school in such district;

trict in which said child resides, who shall fail or neglect or refuse to send such child to a public school for the period of time a public school shall be held during the current year in said district, shall be guilty of a misdemeanor and each day's failure to send such child to a public school shall constitute a separate offense; provided, that in the following cases children shall not be required to attend public schools:

(a) *Children Physically Unable* — Any child who is abnormal, subnormal or physically unable to attend school.

(b) *Children Physically Unable*—Any child, or children, who is, or are physically unable to attend school. In such cases the truant officer shall require a written statement of a competent physician, certifying that such child, or children, is, or are physically unable to attend school;

(b) *Children Who Have Completed the Eighth Grade*—Any child who has completed the eighth grade, in accordance with the provisions of the state course of study.

(c) *Distance from School*—Children between the ages of nine and ten years of age whose parents live more than one and one-half miles, and children over ten years of age whose parents live more than three miles, by the nearest traveled road, from some public school; provided, that if transportation is furnished pupils in said district this exemption shall not apply.

(c) *Distance from School*—Children between the ages of eight and ten years, inclusive, whose place of residence is more than one and one-half miles and children over ten years of age whose place of residence is more than three miles, by the nearest traveled road, from a public school; provided, however, that if transportation to and from school is furnished by the school district, this exemption shall not apply.

(d) *Private Instruction*—Any child, or children, who is, or are, being taught for a like period of time by the parent or private teacher such subjects as are

(d) *Private Instruction*—Any child who is being taught for a like period of time by the parent or private teacher such subjects as are usually taught in the

usually taught in the first eight years in the public school, but before such child, or children, can be taught by a parent or private teacher, such parent or private teacher must receive written permission from the county superintendent, who is hereby authorized to grant such permission only in case of necessity, and such permission shall not extend longer than the end of the current school year. Such child, or children, must report to the county school superintendent or some person designated by him at least once every three months and take an examination in the work covered. If after such examination the county superintendent shall determine that such child, or children, is, or are, not being properly taught, then the county superintendent shall order the parent, guardian or other person in parental relation to send such child, or children, to school the remainder of the school year. Failure on the part of the parent, first eight years in the public school; but before such child can be taught by a parent or a private teacher, such parent or private teacher must receive written permission from the county superintendent, and such permission shall not extend longer than the end of the current school year. Such child must report to the county school superintendent or some person designated by him at least once every three months and take an examination in the work covered. If, after such examination, the county superintendent shall determine that such child is not being properly taught, then the county superintendent shall order the parent, guardian or other person, to send such child to the public school the remainder of the school year. If any parent, guardian or other person having control or charge or custody of any child between the ages of eight and sixteen years shall fail to comply with any provision of this section, he shall be

guardian or other person in parental relation to comply with the order of the county superintendent shall render such person liable to the penalty provided for in this act.

Sec. 5260. *Penalty for Failure by Parent, etc., to Comply*—In case any parent or other person in parental relation shall fail to comply with the provisions of this act he shall be deemed guilty of a misdemeanor and shall, on conviction thereof, be liable to a fine of not less than $5, nor more than $25, or by imprisonment in the county or city jail not less than two nor more than ten days, or by both such fine and imprisonment in the discretion of the court.

guilty of a misdemeanor, and shall, on conviction thereof, be subject to a fine of not less than $5, nor more than $100, or to imprisonment in the county jail not less than two nor more than thirty days, or by both such fine and imprisonment in the discretion of the court.

This act shall take effect and be and remain in force from and after the first day of September, 1926.

The appellants threatened to enforce the provisions of the law and to arrest and prosecute all parents, guardians, and other persons *in loco parentis*, who would send children between the ages of eight and sixteen years to the appellee's primary schools after the date when the law would become operative. The operation of the law was by its terms suspended until September

1, 1926, but the existence of the law, and the threats of appellants to enforce it, were already causing the appellee irreparable damage and injury. Parents and guardians were withdrawing their children and wards from the appellee's schools. They were fearful that the appellee would be obliged to close its schools in the near future, and the uncertainty of the existence of these schools for any definite time induced the parents and guardians to withdraw such children from the private schools and place them in the public schools, which would be permanent, and where their children could pursue their courses from grade to grade without interference by the state or its enforcing officers. The result was a gradual and progressive withdrawal of patronage from the appellee's schools, due solely to the law, and to the threats to arrest and prosecute offending parents and guardians. Not only was the appellee's revenue thereby materially reduced, but its credit was so impaired that it was unable to secure funds for the purpose of erecting essential buildings and improvements. The existence of the appellee's schools was gravely imperilled, and it would be obliged to close its primary schools before the law became effective by its terms.

On December 22, 1923, the appellee filed its amended bill of complaint in the District Court of the United States for the District of Oregon, against the Governor and Attorney General of the State of Ore-

gon, and the District Attorney for Multnomah County, Oregon. In its amended bill the appellee sought to enjoin the enforcement of the amended act (which will hereafter be called the School Law), for that it violated certain provisions of the constitution of the United States and of the Constitution of the State of Oregon, particularly the due process clause of the Fourteenth Amendment and the contract clause of Section 10, Article I of the Constitution of the United States. (Transcript pp. 2-16). And thereafter on December 26, 1923, the appellee filed its motion for an interlocutory injunction in accordance with Section 266 of the Judicial Code of the United States, as amended. (Transcript p. 16).

On January 3, 1924, the appellants filed a motion to strike from the nineteenth paragraph of the amended bill of complaint certain averments on the ground that the same were redundant, irrelevant and not pertinent to the cause of suit. (Transcript p. 18). No other motion or pleading was filed by the appellants.

On January 15, 1924, a hearing was appointed for the appellee's application for interlocutory injunction before the Honorable William B. Gilbert, Circuit Judge of the Ninth Circuit, and the Honorable Charles E. Wolverton and the Honorable Robert S. Bean, District Judges for the District of Oregon. On March 31, 1924, the court, by Wolverton J., filed its opinion in which it declared the School Law to be unconstitutional

and void. (Transcript pp. 20-29). On the same day the court passed its order of interlocutory injunction enjoining the appellants from enforcing or attempting or threatening to enforce the School Law. (Transcript p. 19). This is an appeal from that order.

POINTS

I.

NATURAL RIGHTS OF LIBERTY AND PROPERTY SECURED BY THE CONSTITUTION.

In this country persons are endowed with certain natural rights. These rights were declared in the Declaration of 1776. They were not created by constitution or statute. They existed before constitutions were formed and they will exist after constitutions are dissolved. These rights are inherent and not derivative. The constitution assumes the existence of these natural rights, and it was designed to secure and protect the people against their invasion. First, by the Fifth Amendment, the people were secured against invasion by Congress, and later, by the Fourteenth Amendment, they were secured against invasion by the states. The rights of life, liberty and property, which the Fourteenth Amendment secures, are the same rights of life, liberty and the pursuit of happiness, which were declared inalienable by the Declaration of Independence.

Natural persons are secured in their right to life, liberty and property. Corporate persons are secured in their right of property. This right of property includes not only the right to acquire and own property, but also to use and enjoy property; to engage in and conduct any lawful business or calling, and to enjoy the patronage and income incident to such calling or business.

In *Butchers' Union Company vs. Crescent City Company,* 111 U. S. 746, 757, Mr. Justice Field said:

> "As in our intercourse with our fellow men certain principles of morality are assumed to exist, without which society would be impossible, so certain inherent rights lie at the foundation of all governmental action, and upon a recognition of them alone can free institutions be maintained. These inherent rights have never been more happily expressed than in the Declaration of Independence, that new evangel of liberty to the people: 'We hold these truths to be self-evident (that is, so plain that their truth is recognized upon their mere statement), that all men are endowed' (not by edicts of emperors nor decrees of parliament nor acts of congress), but 'by their Creator, with certain inalienable rights,' (that is, rights which cannot be bartered away nor given away nor taken away except in punishment of crime), 'and that among these are life, liberty and the pursuit of happiness,' and to secure these (not grant them, but secure them), 'governments are instituted among men, deriving their just powers from the consent of the governed.'
>
> "Among these inalienable rights, as proclaimed in that great document, is the right of

men to pursue their happiness, by which is meant the right to pursue any lawful business or vocation, in any manner not inconsistent with the equal rights of others, which may increase their prosperity, or develop their faculties, so as to give them their highest enjoyment.

"The common business and callings of life, the ordinary trades and pursuits, which are innocuous in themselves, and have been followed in all communities from time immemorial, must, therefore, be free in this country to all alike upon the same conditions. The right to pursue them, without let or hindrance, except that which is applied to all persons of the same age, sex and condition, is a distinguishing privilege of citizens of the United States, and an essential element of that freedom which they claim as their birthright."

In the same case, in a concurring opinion, Mr. Justice Bradley said (p. 762):

"The right to follow any of the common occupations of life is an inalienable right; it was formulated as such under the phrase 'pursuit of happiness' in the Declaration of Independence, which commenced with the fundamental proposition that 'all men are created equal, that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty and the pursuit of happiness.' This right is a large ingredient in the civil liberty of the citizen. To deny it to all but a few favored individuals, by investing the latter with a monopoly, is to invade one of the fundamental privileges of the citizen, contrary not only to common right, but, as I think, to the express words of the constitution."

In *Allgeyer vs. State of Louisiana,* 165 U. S. 578, 589, it is said:

> "The liberty mentioned in that amendment means not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary and essential to his carrying out to a successful conclusion the purposes above mentioned."

In *Meyer vs. Nebraska,* 262 U. S. 390, 399, Mr. Justice McReynolds said:

> "While this court has not attempted to define with exactness the liberty thus guaranteed, the term has received much consideration and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint, but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men. The established doctrine is that this liberty may not be interfered with, under the guise of protecting the public interest, by legislative action which is arbitrary or without

> reasonable relation to some purpose within the competency of the state to effect. Determination by the legislature of what constitutes proper exercise of police power is not final nor conclusive, but is subject to supervision by the courts."

The right of property is as sacred as the right to liberty. The protections of the Fourteenth Amendment are equal.

In *Coppage vs. Kansas,* 236 U. S. 1, 17, it is said:

> "But the Fourteenth Amendment, in declaring that a State shall not 'deprive any person of life, liberty or property without due process of law' gives to each of these an equal sanction; it recognizes 'liberty' and 'property' as co-existent human rights, and debars states from any unwarranted interference with either."

These rights of liberty and property are not absolute. The maxim that one must so use his own as not to injure another is of general application. These rights are subject to reasonable restraint and regulation in the interest of the public health, morals, safety and welfare. This is a condition on which rights of person and property are held. But one engaged in a lawful business is entitled to enjoy his property rights free from unreasonable restraint or regulation. This is liberty regulated by law.

The police power reserved to the states is broad and undefined, but there is a limit to its valid exercise. If this were not so the Fourteenth Amendment would

have no efficacy and the states would have unlimited power.

II.

Conducting Schools is a Useful Occupation, Secured and Protected by the Fourteenth Amendment to the Constitution of the United States.

The teaching profession is essentially a useful occupation. Education is a great estate, and it is one of the most vital interests of the nation. It has become one of our greatest tasks. The financial burden is increasing, but is a burden we cheerfully bear. Educational values are not confined to mental instruction. It is vitally important that the light of knowledge may break into the immature mind, but it is even more important that during the formative period of youth there be implanted the true principles and qualities of character. And the school leaves its impress on the character of its pupils.

Every worthy institution of learning is performing a real service to America. And this service does not depend upon the source of its revenue or support, or whether it be a public or private school. There is no system of education which has reached the point of settled perfection in the instruction of the young. There is no system of mental training that approaches perfection so nearly that it can wisely be imposed as the *sine*

qua non for all the children of the country. There is obvious danger in inflexible standards of education. The teaching art is essentially progressive, and our present standards, in the light of experience, may be later discarded. The more agencies that are engaged in this enterprise, the more separated interests we have devoting their earnest efforts to the common purpose, the greater will be the excellence of our institutions of learning. In this, as in other great enterprises, the spirit of competition is a wholesome and constant urge to continued improvement. It is not from uniformity but from variation that progress is born.

The private school has a venerable history. It has contributed to the wide diffusion of knowledge, to the spread of morality and religion, to the development of character, and to the progress of the world. In this country it antedates the public school. Before the foundations of our country were laid it was engaged in imparting knowledge to the men who later breathed into this nation the breath of life. From that day to our own time it has continued without interruption the worthy work of instructing youth. From small and humble beginnings many of these institutions have grown until they have become the greatest educational foundations in the land.

The state of Oregon, early in its history, recognized the value of private schools, and invited and encouraged them to establish institutions there. It enacted laws

which enabled individuals to organize into corporations for the purpose of carrying on the work of education. It was under these laws that the appellee and many other educational corporations were created.

The most eminent educators of this country testify to the value of the private school to the cause of education, and even to the public schools. From the utterances of many men who are entitled to speak with authority, we quote the following:

> "I believe in our dual system of education. I think that it strengthens our tax supported schools and that it produces valuable results because of wide educational experimentation."
>
> *M. Leroy Burton, President University of Michigan.*

> "I believe in the public school system. It has been the salvation of our democracy, but the private schools and colleges have been the salvation of our public schools. These private institutions have their place in our educational system; they prevent it from becoming autocratic and arbitrary and encourage its growth along new lines."
>
> *Philander Claxton, former U. S. Commissioner of Education.*

> "The prohibition of the private elementary school means that private enterprise is not to be allowed to do that extremely valuable experimentation that public agencies rarely find it possible or advisable to attempt."
>
> *Frank Aydelotte, President Swarthmore College.*

> "The interests of public schools require free competition, free experiment and free criticism."
>
> *Edward T. Devine, Associate Editor of The Survey.*

The National Educational Association of the United States, which is the national organization of the public school teachers, adopted the following resolution at the annual convention held in Washington, D. C., on July 3, 1924:

> "The National Educational Association, while recognizing the American public school as a great nursery of broad and tolerant citizenship and of a democratic brotherhood, acknowledges also the contribution made to education by private institutions and enterprises, and recognizes that *citizens have the right to educate their children in either public or private schools,* when the educational standards of both are approved by the State educational authorities."

The courts of the country, on more than one occasion, have given their sanction to the right of persons to engage in this useful occupation.

In *Columbia Trust Company vs. Lincoln Institute,* 138 Ky. 104, it is said:

> "It is useless to multiply authorities on so obvious a proposition. If the teaching of the young to be useful, upright, Christian citizens is not inimical to the public safety, public morals, or the public health, then it must follow that an act which seeks either to prohibit it altogether, or to authorize others to prohibit it, must be in-

valid. It is difficult to find language to make plainer that which is so obvious as is the proposition before us. The purposes of the institutions under discussion include the whole circle of the solid virtues with which youth may be endowed. Undoubtedly, it is a substantial good to educate the youth of the state; and such is the declared policy of the constitution. . . . And when academic education is supplemented by religious training and special instruction in the agricultural and mechanical arts and sciences, it seems to us that it is contrary to the most obvious public policy that an institution which affords such an education should be in any way blocked or impeded. What good reason can be given for prohibiting the exercise of such a charity as that which we have under discussion, unless it can be shown that education, supplemented by religious training, may be in some way an evil to society? Does not the mind of every virtuous and right thinking person at once admit that the contrary is true? Do we not know that religious educational training has a tendency to make men more industrious, more virtuous and better generally, morally and physically? In other words, better, wiser and more useful citizens."

In *Berea College vs. Kentucky,* 211 U. S. 45, 67, Mr. Justice Harlan, in a dissenting opinion, but on a point on which there was no apparent conflict, said:

"The capacity to impart instruction to others is given by the Almighty for beneficent purposes; and its use may not be forbidden nor interfered with by government—certainly not, unless such instruction is, in its nature, harmful to the public morals or imperils the public safety. The right

> to impart instruction, harmless in itself, beneficial to those who receive it, is a substantial right of property—especially where the services are rendered for compensation. But even if such right be not strictly a property right, it is, beyond question, part of one's liberty as guaranteed against hostile state action by the constitution of the United States. This court has more than once said that liberty guaranteed by the 14th amendment embraces 'the right of the citizen to be free in the enjoyment of all his faculties,' and 'to be free to use them in all lawful ways'."

Finally, in the recent decision in *Meyer vs. Nebraska*, 262 U. S. 390, 400, it is said:

> "The American people have always regarded education and acquisition of knowledge as matters of supreme importance which should be diligently promoted. The Ordinance of 1787 declares: 'Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.' Corresponding to the right of control, it is the natural duty of the parent to give his children education suitable to their station in life; and nearly all the states, including Nebraska, enforce this obligation by compulsory laws.
>
> "Practically, education of the young is only possible in schools conducted by especially qualified persons who devote themselves thereto. The calling always has been regarded as useful and honorable, essential, indeed, to the public welfare. Mere knowledge of the German language cannot reasonably be regarded as harmful. Heretofore it has been commonly looked upon as help-

ful and desirable. Plaintiff in error taught this language in school as part of his occupation. His right thus to teach and the right of parents to engage him so to instruct their children, we think, are within the liberty of the amendment.

"The challenged statute forbids the teaching in school of any subject except in English; also the teaching of any other language until the pupil has attained and successfully passed the eighth grade, which is not usually accomplished before the age of twelve. The Supreme Court of the state has held that 'the so-called ancient or dead languages' are not 'within the spirit or the purpose of the act.' *Nebraska District of Evangelical Lutheran Synod, etc., vs. McKelvie et al.* (Neb.) 187 N. W. 927 (April 19, 1922). Latin, Greek, Hebrew are not proscribed; but German, French, Spanish, Italian and every other alien speech are within the ban. Evidently the Legislature has attempted materially to interfere with the calling of modern language teachers, with the opportunities of pupils to acquire knowledge, and with the power of parents to control the education of their own."

The decisions which we have cited, culminating in the notable opinion in *Meyer vs. Nebraska, supra,* remove from the field of controversy, if it was ever debatable, the doctrine that people in this country have certain natural rights; that among these is the right to follow useful occupations; that the calling of a teacher is a useful occupation, and that teachers are protected by the Fourteenth Amendment against arbitrary and unreasonable invasion of their calling by the state.

Corporations have no liberty within the meaning of the Fourteenth Amendment, but they are protected in their property rights by the sanctions of that Amendment. *Smyth vs. Ames,* 169 U. S. 466; *Covington etc. Co. vs. Sandford,* 164 U. S. 578; *Gulf, Colorado & Santa Fe Railway Co. vs. Ellis,* 165 U. S. 150, 154; *Southern Ry. Co. vs. Greene,* 216 U. S. 400, 416.

The lower court, after quoting from *Meyer vs. Nebraska, supra,* the statement that Meyer's right thus to teach and the right of parents to engage him so to instruct their children, are within the liberty of the Amendment, said:

> "These declarations, although they speak of the individual, are applicable here, notwithstanding complainants are bodies corporate. Their right and privilege to teach the grammar school grades and the privilege of parents to employ them, are the same as though the individual were conducting a private school along the same lines. The mere fact that they bear corporate names affords no basis for distinguishing them from private schools, conducted by an individual or individuals with a corps of instructors, and teachers, to carry on the school work." *Society of Sisters of Holy Names, etc., vs. Pierce,* 296 Fed. 928, 937. (Transcript, p. 20.)

It was also said in the opinion:

> "It can scarcely be contended that complainants' right to carry on their schools, whether parochial or private, is not a property right." (Transcript, p. 24.) 296 Fed. 928, 933.

In *Spring Valley Co. vs. San Francisco*, 165 Fed. 667, 676, it is said:

> "The terms 'life, liberty and property' embrace every right which the law protects; they include not only the right to own and hold, but also the right to use and enjoy property. Profits and income are property."

In *Terrace vs. Thompson*, 263 U. S. 197, 215, the court said:

> "The Terraces' property rights in the land include the right to use, lease and dispose of it for lawful purposes, and the Constitution protects these essential attributes of property.

In *Buchanan vs. Warley*, 245 U. S. 60, 74, it is said:

> "Property is more than the mere thing which a person owns. It is elementary that it includes the right to acquire, use and dispose of it. The Constitution protects these essential attributes of property. Property consists of the free use, enjoyment and disposal of a person's acquisitions without control or diminution save by the law of the land."

In 12 C. J. 1212, Sec. 988, it is said:

> "The term 'property' as used in the various guaranties against the taking of property without due process of law, is used in its most general sense as embracing everything over which man may have exclusive dominion."

In *Adkins vs. Childrens Hospital*, 261 U. S. 525, a corporation's right to contract with its employees was

held to be a property right, and in *C. M. & St. P. Ry. Co. vs. Wisconsin*, 238 U. S. 491, the right of a railroad corporation to lower the upper berths in sleeping cars when not occupied, was held to be a property right.

There ought to be no difficulty in sustaining as a property right, the right of a teacher to contract for his services. But whether it be a right of liberty or of property, or partakes of the nature of both, there can be no doubt that an educational corporation is protected in its right to conduct a school by the guaranties of the Fourteenth Amendment, in view of the decision in the case of *Nebraska District of Evangelical Lutheran Synod v. McKelvie et al*, 262 U. S. 404, rendered at the same time as the decision in *Meyer vs. Nebraska, supra.* This Synod case was a suit to enjoin the officers of the State of Nebraska from enforcing as against it the provisions of the Nebraska language act. The Supreme Court of Nebraska denied the injunction, but its decree was reversed by the Supreme Court of the United States. The bill of complaint, as appears from the transcript of record, pp. 7, 8, alleges that the State officials were threatening to enforce the act by arresting and prosecuting the Synod's pastors, officers and agents and teachers, and that in this way the Synod and the pastors, officers, agents and teachers would be deprived of their property and liberty without due process of law. The court rendered a memorandum opinion on the authority of *Meyer vs. Nebraska*, but, as the relief sought

was granted, it follows, that the court held that the Synod's right to conduct its school, free from unlawful interference, is a property right. And it was held to be a right protected by the Fourteenth Amendment.

III.

The School Law Deprives the Appellee of Its Right to Conduct Its Primary Schools.

The purpose of the law was to abolish all private primary schools in Oregon, and that would be its inevitable effect.

In Oregon a child under six years of age cannot attend school. The normal rate of progress for children is one grade each year. There are eight primary grades, and a normal child should complete the eighth grade at the age of thirteen or fourteen years. At eight years of age the child should be in the third grade, and there are few children who remain in any of the first eight grades to the age of sixteen years. In private schools there will naturally be so few children of eight years of age who have not completed the second grade, and so few of the age of sixteen years, or over, who have not completed all of the primary grades, that it would be impracticable to maintain any grade beyond the second if this law were enforced. The inevitable result would be to remove six grades, from the third to

the eighth, inclusive, from all primary private schools. It does not require argument to convince one that this would close the primary schools. These schools are organized, equipped and appointed with the view of instructing in all of the primary grades. To remove two-third of all the grades would not only impair and reduce the patronage, but it would disorganize the entire system. Moreover, the attendance in the two first grades would be materially reduced, because few parents would be inclined to send their children to a school where only two grades are taught. Such children would be required to change to another school when they had completed the second grade.

The law was proposed ostensibly to enforce compulsory education. It bore that title on the official ballot. This ballot title was misleading. Compulsory education was amply provided by the law it is intended to amend, and compulsory education is not advanced in the slightest degree by this measure. A comparison of the two statutes appearing in the Statement will disclose that it was neither the purpose nor the intention of the proponents to extend compulsory education. The single purpose was to enforce *compulsory public school attendance*, and by that means to force all primary private schools to close.

A school cannot be maintained without pupils. Neither can it remain static. It must either progress or it will decline.

The District Court in its decision said:

> "The act could not be more effective for utterly destroying the business and occupation of complainants' schools, except perhaps the college and higher preparatory grades, if it had been entitled 'An Act to prevent parochial and private schools from teaching the grammar grades.' This serves to emphasize the seriousness of the controversy. Indeed, the simile is no stronger than the argument for the adoption of the measure put it: 'A divided school can no more succeed than a divided nation.' That such is the purpose of the act is obvious and incontrovertible." 296 F. 936. (Transcript, p. 27.)

And again:

> "It is at once obvious that, in the very nature of the upbuilding and maintenance of parochial and private schools, when the attendance, prospective as well as acquired, is taken away or rendered unlawful, it will destroy the pursuit or occupation. If school buildings have been constructed, and equipment purchased and provided, without school attendance, such property must lapse into disuse, and become of no value for the purposes for which it was designed, and, of course, an irreparable loss will ensue; the paramount loss of school attendance, and a damage and practical destruction, especially for school purposes, of the school property." 296 F. 933. (Transcript, p. 24.)

The reference of the District Court to the "divided school" is from the argument of the proponents in the

official pamphlet advocating the adoption of the measure. (Appendix B).

The School Law does not mention private schools and its penal provisions are directed to parents and others who fail to send their children to the public schools. The private schools cannot be maintained in their normal courses unless they can induce their patrons to violate the law and incur the penalties of fine and imprisonment. This creates an impossible condition. It is common knowledge that private schools are maintained on narrow margins of profit, and that they require constant encouragement and continued support for their existence. A penal statute directed against their patrons would at once make their maintenance impossible.

It is suggested that private schools may still be maintained for "supplementary instruction," for students over or under the age limits set by the law, or before or after the sessions of the public schools. We will only pause to cite the frank admission in the Attorney General's brief, that the people of Oregon "have enacted a law requiring that all children shall be educated *exclusively* in the public schools." (p. 72).

It is the practice and it is the duty of courts to look through forms into the substance of things. They will not be deceived by pretense, however artful, to enforce prohibition in the guise of regulation.

In *Mugler v. Kansas,* 123 U. S. 623, 661, Mr. Justice Harlan said:

> "The courts are not bound by mere forms, nor are they to be misled by mere pretenses. They are at liberty—indeed, are under a solemn duty—to look at the substance of things whenever they enter upon the inquiry whether the legislative has transcended the limits of its authority."

In *Adams vs. Tanner,* 244 U. S. 590, 593, Mr. Justive McReynolds said:

> "Appellant's occupation as agent for workers cannot exist unless they pay for what they receive. To say it is not prohibited because fees may be collected for something done in behalf of other principals is not good reasoning. The statute is one of prohibition, not regulation. 'You take my house, when you do take the prop that doth sustain my house; you take my life when you do take the means whereby I live.' "

This law was aimed at the destruction of the private schools by requiring parents and guardians to send their children to the public schools. The arrest and prosecution of offending parents and guardians would directly affect the persons named in the statute. It would invade the natural right of the parent to direct the education of his own. It would deprive the teachers in the private schools of the right to earn their living in a lawful calling. It would deprive children of their right to acquire useful knowledge in a private

school. And, finally, it would deprive private schools of their property right in the patronage of the schools, and of their right to engage in a lawful and useful occupation.

In *Truax vs. Raich,* 239 U. S. 60, the court was considering an initiative law of Arizona. The law prohibited employers of labor, having more than five workers, from employing less than eighty per cent qualified electors or native-born citizens of the United States. Mike Raich, an alien, in the employ of Truax, brought suit to enjoin the enforcement of the law. It was there contended that "the complainant cannot sue save to redress his own grievance; that is, that the servant cannot complaint for the master, and that it is the master who is subject to prosecution, and not the complainant." The court, regarding the "internal sense" and "substance" of the law, said, p. 38:

> "The fact that the employment is at the will of the parties does not make it at the will of others. The employee has manifest interest in the freedom of the employer to exercise his judgment without illegal interference or compulsion and, by the weight of authority, the unjustified interference of a third person is actionable, although the employment is at will.
>
> "But the act undertakes to operate directly upon the employment of aliens, and if enforced would compel the employers to discharge a sufficient number of his employees to bring the alien quota within the prescribed limit. It sufficiently appears that the discharge of the complainant

will be solely for the purpose of meeting the requirements of the act and avoiding threatened prosecution under its provisions. It is therefore idle to call the injury indirect or remote."

In *Buchanan vs. Warley*, 245 U. S. 60, 74, Mr. Justice Day said:

"The objection is made that this writ of error should be dismissed because the alleged denial of constitutional rights involves only the rights of colored persons, and the plaintiff in error is a white person. This court has frequently held that while an unconstitutional act is no law, attacks upon the validity of laws can only be entertained when made by those whose rights are directly affected by the law or ordinance in question. Only such persons, it has been settled, can be heard to attack the constitutionality of the law or ordinance. But this case does not run counter to that principle.

"The property here involved was sold by the plaintiff in error, a white man, on the terms stated, to a colored man; the action for specific performance was entertained in the court below, and in both courts the plaintiff's right to have the contract enforced was denied solely because of the effect of the ordinance making it illegal for a colored person to occupy the lot sold. But for the ordinance the state courts would have enforced the contract, and the defendant would have been compelled to pay the purchase price and take a conveyance of the premises. The right of the plaintiff in error to sell his property was directly involved and necessarily impaired because it was held in effect that he could not sell the lot to a person of color who was willing and ready to

> acquire the property, and had obligated himself to take it. This case does not come within the class wherein this court has held that where one seeks to avoid the enforcement of a law or ordinance he must present a grievance of his own, and not rest the attack upon the alleged violation of another's rights. In this case the property rights of the plaintiff are necessarily involved."

The court then determined that the statute in quesiton was unconstitutional because it prevented alienation of property to a negro solely on account of his color.

In *Terrace vs. Thompson, supra,* the validity of the Alien Land Act of Washington was involved. Nakatsuka desired to lease the land of the Terraces. The Terraces and Nakatsuka joined in a suit to restrain the Attorney General from enforcing the Act. Mr. Justice Butler said (263 U. S. 215):

> "The Terraces' property rights in the land include the right to use, lease and dispose of it for lawful purposes, and the Constitution protects these essential attributes of property, and also protects Nakatsuka in his right to earn a living by following the ordinary occupations of life. If, as claimed, the state act is repugnant to the due process and equal protection clauses of the Fourteenth Amendment, then its enforcement will deprive the owners of their right to lease the land to Nakatsuka, and deprive him of his right to pursue the occupation of farmer. * * * *The owners have an interest in the freedom of the alien, and he has an interest in their freedom to*

make the lease. The state act purports to act directly upon the consummation of the proposed transaction between them, and the threat and purpose of the Attorney General to enforce its punishments and forfeitures prevents each from dealing with the other."

So the appellee here has an interest in the freedom of the parent to contract with it for the education of the child. The liberty of the parent cannot be invaded without a direct invasion of the appellee's property rights.

IV.

The School Law Violates the Right of Parental Control over Children.

Although no parent is a party to this proceeding, it is our position that the right of the parent to control the education of his own is so intimately connected with the right of the appellee to maintain its primary schools, that the question of parental rights is here directly involved. This is because the appellee's business of conducting primary schools is dependent for its continued existence on its ability to make contracts with parents. If the parents have a constitutional right to enter into such contracts, then the enforcement of the School Law will directly affect the rights of the appellee by an unwarranted invasion of the parental right. The unlawful

coercion of the parents who patronize the private schools, is a matter of vital interest to the appellee.

Meyer v. Nebraska, supra, is directly in point. The act there laid its prohibition upon the teacher. It was the teacher against whom the penalty for violation of the act was directed. It was a teacher who was prosecuted in the particular case. Yet, the court did not confine its decision to the teacher's right to teach German; it also determined the question of the parents' right to engage the services of the teacher, saying:

> "His (Meyer's) right thus to teach and the right of parents to engage him so to instruct their children, we think, are within the liberty of the amendment," and
>
> "Evidently the Legislature has attempted materially to interfere with the calling of modern language teachers, with the opportunities of pupils to acquire knowledge, and with the power of parents to control the education of their own."

In *Terrace vs. Thompson, supra,* the court determined the rights of both the owner of the land and the alien; in *Truax vs. Raich, supra,* the court determined the rights of both the master and the servant; in *Buchanan vs. Warley, supra,* the court determined the rights both of the vendor of the land and the colored man to whom he had agreed to sell.

The appellee being threatened with the consequences of the enforcement of an act which assumes to prevent it from dealing with parents who desire to enter into

contracts with it for the education of their children, it becomes appropriate to determine what are the parents' rights in those circumstances. Indeed, the determination of that question seems to be necessary, because if the state has the right to prevent parents from sending their children to private schools, then the interference with appellee is not unlawful.

It is our view, based upon the facts of nature and the character of our institutions, that the parent has a natural right to the custody and control of his children, and that included therein is the right to direct and control their education. The State, as *parens patriae*, may interfere to the extent necessary to compel the parent to perform the duties arising out of his relation to the child, and for that reason compulsory education laws, such as are in effect in Oregon, and in most of the States of the Union, are a valid exercise of the state's power. For the same reason, laws may be enacted and enforced through the operation of which the court may interfere with the parent's ordinary right of custody where it appears, after a judicial hearing, upon a sufficient showing, that parental authority is not being properly exercised.

But this parental right of custody and control is not a privilege granted by the state to the parent which the state may at will withdraw. The notion that the state at any time it desires may invade the home and wrest the child from the guidance and care of the mother and

father, is entirely foreign to American institutions. American ideals are not founded on a Spartan model. The people were not made for the glory and aggrandizement of the government, but our government was instituted to promote the liberty and happiness of the people. In the Constitution of Oregon, Art. I, Sec. 1, is this declaration:

> "We declare that all men, when they form a social compact, are equal in right; that all power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety and happiness; and they have at all times a right to alter, reform or abolish the government in such manner as they may think proper."

The family, with the parents' authority over and duty to care for the children, and with the childrens' reciprocal duty of obedience, existed before governments began and perhaps will outlive them. Free government is built around the family, and it cannot long endure if the sanctity of the home be not preserved, and parental authority is essential to the sanctity of the home.

"There are certain virtues," says the Supreme Court of Oklahoma in the case of *School Board v. Thompson*, 24 Okla. 1, 10, "that may safely be attributed to the generality of mankind, among which are love of country and love of offspring." It is the parent's love for his offspring that makes him the rightful mentor of the

child. Compulsory education laws are made for the exceptional parent who refuses to perform his duty in that respect.

In *Denton v. James*, 107 Kan. 729, 193 Pac. 307, 12 A. L. R. 1146, 1151, it is said:

> "Sometimes it is declared that the rearing of children is a function which the state delegates to parents, and which it may resume at will, for its welfare through welfare of the child. The rearing of children is not in fact a function delegated by the state to the citizen, any more than the begetting of children is a delegated state function, and the theory of government recognized by the declaration is responsible for absolutism in its most tyrannical form. The theory is expressly repudiated by the first two sections of the Bill of Rights of this state:
>
> "1. All men are possessed of equal and inalienable natural rights, among which are life, liberty and the pursuit of happiness.
>
> "2. All political power is inherent in the people, and all free governments are founded on their authority, and are instituted for their equal protection and benefit." Gen. Stat. 1915, pars. 105. 106.
>
> "Man has no higher right or interest or happiness than that for which the words 'family' and 'home' stand. Very often it is said, with a touch of derision, that a child is not a chattel, and a parent has no property in his child giving him right to custody, which is very true. The interest which a parent has in the nurture of his own offspring, and in nearness to them for that purpose, lies in a different plane from that occupied by property. It transcends property. On the

> child's side, it has no higher welfare than to be reared by its parents. The state has no higher welfare than to have children reared by their parents, and free government is instituted for the protection and benefit of parenthood as one of the natural rights which the citizen possesses."

In *Wadleigh v. Newhall,* 136 Fed. 941, 947, the court quotes from 2 Story Eq. Jur. Sec. 1341, as follows:

> "The jurisdiction of the court of chancery extends to the care of the person of the infant so far as necessary for his protection and education. * * * It is upon the former ground principally—that is to say, for the due protection and education of the infant—that the court interferes with the ordinary rights of parents, as guardians by nature or by nurture, in regard to the custody or care of their children. For although, in general parents are intrusted with the custody and care of the persons and the education of their children, yet this is done upon the natural presumption that the children will be properly taken care of and will be brought up with a due education in literature, and morals, and religion, and that they will be treated with kindness and affection."

In *Hardwick v. Board of School Trustees,* 205 Pac. 49 (Cal.), the court held that a school board could not, as against the will of a parent, compel a pupil in a public school to take part in certain forms of dancing as part of the curriculum. On the subject of the authority of the parent, the court said (p. 54):

"Has the state the right to enact a law or confer upon any public authorities a power the effect of which would be to alienate in a measure the children from parental authority? May the parents thus be eliminated in any measure from consideration in the matter of the discipline and education of their children along lines looking to the building up of the personal character and the advancement of the personal welfare of the latter? These questions, of course, proceed upon the assumption that the views of parents affecting the education and discipline of their children are reasonable, relate to matters in the rearing and education of their children as to which their voice and choice should first be heeded and not offensive to the moral well-being of the children or inconsistent with the best interests of society; and to answer said questions in the affirmative would be to give sanction to a power over home life that might result in denying to parents their natural as well as their constitutional right to govern or control, within the scope of just parental authority, their own progeny. Indeed, it would be distinctly revolutionary and possibly subversive of that home life so essential to the safety and security of society and the government which regulates it, the very opposite effect of what the public school system is designed to accomplish, to hold that any such overreaching power existed in the state or any of its agencies."

The case of *Commonwealth v. Armstrong*, 1 Penn. Law Journal Reports, 146, is a decision of the Supreme Court of Pennsylvania in the Court of Quarter Sessions of the Peace for Lycoming County. The opinion by Justice Lewis is a clear exposition of the nature and ex-

tent of parental authority. It attracted the attention of Chancellor Kent who in a letter to Judge Lewis, printed at page 154 of the Reports, said that he agreed with the "reasoning and conclusion", and added, "I have noted in a blank leaf in a proper place in my commentaries, the decision as a just explanation and application of the parental authority to a case like the one before you". The case arose on an application of a minister of the Baptist faith for an order of the court requiring the defendant to give surety for keeping the peace. Against the positive commands of the defendant, the minister had baptized the daughter of the defendant by immersion, and the parent had threatened the minister with personal injury. The court, holding that no man has the right to take the law into his own hands, ordered the defendant to give surety to keep the peace, but in determining the question of who should pay the costs inquired into the conduct of the parties to ascertain whose wrongful act produced the necessity for the application. It was held that the minister had interfered with the lawful authority of the father over his own offspring, and that he therefore should pay the costs.

The opinion, a long one, may be read with profit in its entirety. We can reproduce only a portion of it here. It was said:

> "The authority of the father results from his duties. He is charged with the duties of main-

tenance and education. These cannot be performed without the authority to command and to enforce obedience. The term education is not limited to the ordinary instruction of the child in the pursuits of literature. It comprehends a proper attention to the moral and religious sentiments of the child. In the discharge of this duty, it is the undoubted right of the father to designate such teachers, either in morals, religion or literature, as he shall deem best calculated to give correct instruction to the child. No teacher, either in religion or in any other branch of education, has any authority over the child, except what he derives from its parent or guardian; and that authority may be withdrawn whenever the parent, in the exercise of his discretionary power, may think proper. * * *

"The patriarchal government was established by the Most High, and, with the necessary modifications, it exists at the present day. The authority of the parent over the youth and inexperience of his offspring, rests on foundations far more sacred than the institutions of man."

After quoting from the Scriptures and the writings of scholars in support of the foregoing statements, the Court continued:

"The doctrines of the common law are in accordance with these principles. It is the duty of the parent to maintain and educate the child, and he possesses the resulting authority to control it in all things necessary to the accomplishment of these objects. The law has assigned no limits to the authority of the parent over the child, except that it must not be exercised in such manner as to endanger its safety or morals. If the parent

> should transcend his authority in this respect, an appeal does not lie to a minister of the Gospel of any denomination whatever. Application for relief can only be made to the authorities entrusted by the supremacy of the law, with the high power of controlling parental authority when the morals or safety of the child require such interference. 1 Blackstone, 450; 2 Kent's Commentaries, 205.
>
> "It is dangerous to depart from established principles. Parental authority is not to be subverted so long as it is exercised within the limits which the law has prescribed. It is the duty of the parent to regulate the conscience of the child, by proper attention to its education; and there is no security for the offspring during the tender years of its minority but in obedience to the authority of its parents in all things not injurious to its health or morals."

The fact that courts of authority have sustained the right of parents to select studies for their children even in public schools, indicates how firmly the doctrine of parental authority is implanted in our law. *School Trustees v. People,* 87 Ill. 303; *School Board v. Thompson,* 24 Okla. 1; *Morrow v. Wood,* 35 Wis. 59.

Meyer v. Nebraska, supra, reaffirms that doctrine. Mr. Justice McReynolds said:

> "Corresponding to the right of control it is the natural duty of the parent to give his children education suitable to their station in life, and nearly all the states, including Nebraska, enforce this obligation by compulsory laws. * * *
>
> "Evidently the Legislature has attempted materially to interfere with the calling of modern

language teachers, with the opportunities of pupils to acquire knowledge, and with the power of parents to control the education of their own."

And then, as if to remove all doubt concerning the rule it intended to announce, the court continued:

"That the state may do much, go very far, indeed, in order to improve the quality of its citizens, physically, mentally and morally, is clear; but the individual has certain fundamental rights which must be respected. The protection of the Constitution extends to all, to those who speak other languages, as well as to those born with English on the tongue. Perhaps it would be highly advantageous if all had ready understanding of our ordinary speech, but this cannot be coerced by methods which conflict with the Constitution—a desirable end cannot be promoted by prohibited means.

"For the welfare of his Ideal Commonwealth, Plato suggested a law which should provide:

'That the wives of our guardians are to be common, and their children are to be common, and no parent is to know his own child, nor any child his parent. * * * The proper officers will take the offspring of the good parents to the pen or fold, and there they will deposit them with certain nurses who dwell in a separate quarter; but the offspring of the inferior, or of the better when they chance to be deformed, will be put away in some mysterious, unknown place, as they should be.'

"In order to submerge the individual and develop ideal citizens, Sparta assembled the males at seven into barracks and intrusted their subse-

quent education and training to official guardians. Although such measures have been deliberately approved by men of great genius, their ideas touching the relation between individual and state were wholly different from those upon which our institutions rest; and it hardly will be affirmed that any Legislature could impose such restrictions upon the people of a state without doing violence to both letter and spirit of the Constitution.

"The desire of the Legislature to foster a homogenous people with American ideals prepared readily to understand current discussions of civic matters is easy to appreciate. Unfortunate experiences during the late war and aversion toward every character of truculent adversaries were certainly enough to quicken that aspiration. But the means adopted, we think, exceed the limitations upon the power of the state and conflict with rights assured to plaintiff in error. The interference is plain enough and no adequate reason therefor in time of peace and domestic tranquility has been shown."

The court evidently determined that the Spartan principle pervaded the Nebraska law. The Oregon law is more truly Spartan. Instead of prohibiting the parent from the right to have his child taught any subject in the German language in a private school, it prohibits him from sending his child to a private school for any kind of instruction. The Oregon School Law was enacted, according to its proponents, for the purpose of developing "ideal citizens". They wrote in the official pamphlet:

> "Mix the children of the foreign-born with the native-born, the rich with the poor. Mix those with prejudices in the public school melting pot for a few years while their minds are plastic, and finally bring out the finished product—a true American." (Appendix B.)

These sentences bear a certain ruthless and even cruel implication which is subversive of American ideals of home and parental authority. If the children, against the will of their parents, are to be "mixed" by legislative mandate, it is difficult to perceive where this sort of legislation will end. It may not be long before self-appointed guardians of the public weal will propose that children be taken from the custody and control of their parents altogether.

V.

The School Law Cannot Be Sustained as a Legitimate Exercise of the Police Power.

The right to engage in the calling of teaching is a right protected by the Fourteenth Amendment, and the effect of the School Law is to deprive appellee of that right. But the appellants claim that the legislation should be sustained as a lawful exercise of the police power of the state, and more specifically of the State's power over education. We shall now consider that contention.

We first call attention to the familiar pronouncements of this court on the limitation of the police power. In the case of *Lawton vs. Steel*, 152 U. S. 133, 137, it is said:

> "To justify the state in thus interposing its authority on behalf of the public, it must appear: First, that the interests of the public generally, as distinguished from those of a particular class, require such interference; and second, that the means are reasonably necessary for the accomplishment of the purpose, and not unnecessarily oppressive upon individuals. The legislature may not, under the guise of protecting the public interests, arbitrarily interfere with private business, or impose unusual and unnecessary restrictions upon lawful occupations; in other words, its determination as to what is a proper exercise of its police powers is not final or conclusive, but is subject to the supervision of the courts."

The foregoing was cited with approval in *Meyer vs. The State of Nebraska, supra*, where the court said (262 U. S. 399):

> "The established doctrine is that this liberty (i.e., of the Fourteenth Amendment) may not be interfered with under the guise of protecting the public interest by legislative action, which is arbitrary or without reasonable relation to some purpose within the competency of the state to effect."

In *Adams vs. Tanner, supra*, Mr. Justice McReynolds said:

> "Happily for all, the fundamental guaranties of the Constitution cannot be freely submerged if

and whenever some ostensible justification is advanced, and the police power invoked."

In *Dobbins vs. Los Angeles*, 195 U. S. 223, 236, the court, speaking through Mr. Justice Day, after stating that every intendment is to be made in favor of the lawfulness of the exercise of municipal power, declared:

> "But notwithstanding this general rule of the law, it is now thoroughly well settled by the decision of this Court that municipal by-laws and ordinances, and even legislative enactments undertaking to regulate useful business enterprises, are subject to investigation in the courts with a view to determining whether the law or ordinance is a lawful exercise of the police power, or whether under the guise of enforcing police regulations there has been an unwarranted and arbitrary interference with the constitutional rights to carry on a lawful business, to make contracts, or to use and enjoy property."

In *Dobbins v. Los Angeles, supra*, the court approved this language of the Supreme Court of California in *Re Smith*, 143 Cal. 368:

> "When the police power is exerted to regulate a useful business or occupation, the legislature is not the exclusive judge as to what is a reasonable and just restraint upon the constitutional right of the citizen to pursue any trade, business or vocation which in itself is recognized as innocent and useful to the community. It is always a judicial question, if any particular regulation of such right is a valid exercise of the police power, though the authority of the courts to declare such regulation invalid will be exercised with the ut-

most caution, and only when it is clear that the ordinance or law declared void passes the limits of the police power, and infringes upon rights guaranteed by the Constitution."

In *Connolly v. Union Sewer Pipe Co.*, 184 U. S. 540, 558, Mr. Justice Harlan said:

> "The question of constitutional law to which we have referred (the equal protection of the laws) cannot be disposed of by saying that the statute in question may be referred to what are called the police powers of the state, which, as often stated by this court, were not included in the grants of power to the general government, and therefore were reserved to the state when the Constitution was ordained. But, as the Constitution of the United States is the supreme law of the land, anything in the constitution or statutes of the states to the contrary notwithstanding, a statute of a state, even when avowedly enacted in the exercise of its police power, must yield to that law. No right granted or secured by the Constitution of the United States can be impaired or destroyed by a state enactment, whatever may be the source from which the power to pass such enactment may have been derived. The nullity of any act inconsistent with the Constitution is produced by the declaration that the Constitution is the supreme law. The state has undoubtedly the power by appropriate legislation to protect the public morals, the public health, and the public safety; but if, by their necessary operation, its regulations looking to either of those ends amount to a denial of persons within its jurisdiction of the equal protection of the laws, they must be deemed unconstitutional and void."

Again, in *New York ex rel Silz v. Hesterberg,* 211 U. S. 31, 39, it is said:

> "That the legislature of the state is not the final judge of the limitations of the police power, and that such enactments are subject to the scrutiny of the courts, and will be set aside when found to be unwarranted and arbitrary interferences with rights protected by the Constitution in carrying on a lawful business or making contracts for the use and enjoyment of property, is well settled by former decisions of this court."

In harmony with these declarations is the following statement of Mr. Justice Harris, in *Union Fishermen's Co. v. Shoemaker,* 98 Ore. 659, 675:

> "The Legislature, it is true, is not the final judge of the limitations of the police power, and since the legislative action must be reasonably necessary for the public benefit, the validity of all police regulations depends upon whether they can ultimately pass the judicial test of reasonableness."

Most of the foregoing decisions were made in cases where the question related to the validity of ordinances or statutes which merely regulated a business or occupation. The courts will certainly scrutinize more closely a statute whose effect is utterly to destroy a lawful occupation.

It is further well established that,

> "Neither the Legislature nor municipality can, under the guise of police regulations, arbi-

> trarily invade private property or personal rights; and when such regulations are called in question the test should be whether they have some relation to the public health or public safety, and whether such is, in fact, the end sought to be attained." *California Reduction Co. v. Sanitary Reduction Works,* 126 Fed. 29, 34.

Through the foregoing authorities runs the doctrine that the test of an act asserted to have been passed by virtue of the police power of the state is whether it is reasonable, or whether it is merely an arbitrary deprivation of a right secured by the Constitution. And so, Justice Marshall said in *Mehlos v. Milwaukee,* 146 N. W. (Wis.) 882, 884:

> "Too much significance cannot be given to the word 'reasonable' in considering the scope of the police power in a constitutional sense. It took much time, notwithstanding clear declarations, over and over again, on the subject here and by the Federal Supreme and other courts * * * for courts and text writers, in general, to appreciate that the final evidentiary test of the legitimacy of a police regulation is whether it is reasonable under all the circumstances."

It is plain, therefore, that a constitutional guaranty has prevailing force even as against the exercise of the police power, when the action of the legislature is unreasonable and arbitrary, and without reasonable relation to a legitimate end sought to be attained.

The appellee concedes that education is a legitimate field for the exercise of the police power. The state has

a genuine interest in the proper education of youth. It can compel parents to send their children to some school which complies with standards fixed by the state, or require that the children otherwise receive the minimum of learning prescribed. Neither the appellee nor any one else has ever objected to the Compulsory Education Law which has been in effect in Oregon since the year 1907. We do not question the right of the state to regulate the private schools in the interest of the public welfare, to require that proper sanitary and safety precautions be observed, or that certain standards be complied with.

But this law, bearing the misleading title "Compulsory Education", is designed to destroy schools which for many years have played an important and valuable part in the education of the youth of Oregon. It is an attempt by the state, under the guise and pretense of compelling the education of youth, to invest itself with a monopoly of the business of education. This is clearly a law of prohibition and not of regulation. It has no regulatory features.

When the state requires all parents to send their children to schools, public, private or parochial, which must maintain certain standards, it achieves compulsory education. When it abolishes private and parochial schools maintaining those standards, then it merely by arbitrary fiat, takes the property and business of those conducting such schools, without at all furthering the

cause of compulsory education. The destruction of schools does not tend to promote the education of youth.

There is not a single regulatory provision in the School Law. It points to no evil that ought to be remedied; it suggests no abuse that should be removed; and it contains no provision relating, even remotely, to the public health, morals or safety. The only departure from the original law, except a slight change in ages, is that provision which compels public school attendance. The controversy is, therefore, reduced to this single point: Can the state compel a parent to withdraw his children from a private school and send them to a public school, where the instruction and discipline in the private school are in all things equal to the instruction and discipline in the public school? If the private schools were distinctly superior to the public schools in their methods of instruction and in the enforcement of discipline, this law would still compel the child to attend the inferior school.

That the private schools are efficient; that they are properly conducted, and that they conform to all the regulations of the state, are within the appellants' admissions in this suit.

Judge Wolverton, speaking for the court below, said:

> "No one has advanced the argument that teaching by these schools in the grammar grades is a menace, or of vicious poteney, to the state or the community at large, and there appears no

plausible or sound reason why they should be eliminated from taking part in the primary education of youth. It would seem that the act in question is neither necessary nor essential for the proper enforcement of the state's school policy." (Transcript, p. 28.) 296 F. 937.

VI.

BASES OF ACTION ASSIGNED BY APPELLANTS ARE NOT TENABLE.

It requires nimble dexterity, a real race of diligence on the part of the proponents, to discover some slender pretext to sustain this law. Finding no evils in appellee's schools, or in any existing private schools, appellants indulge in pessimistic predictions, and speculations concerning a possible basis of the action of the voters of Oregon in passing the School Law. In the brief for the Governor of Oregon appears the following:

> "The voters of Oregon who adopted the new school law for their state had the right to base their action on the belief that the fact that the great increase in juvenile crime followed so closely after the great increase in the number of children in the United States who were not attending public schools, was more than a coincidence." (p. 39.)

And it is therein further said:

> "The voters in Oregon might also have based their action in adopting this law upon the alarm which they felt at the rising tide of religious sus-

> picion in this country, and upon their belief that the basic cause of such religious feelings was the separation of children along religious lines during the most susceptible years of their lives, with the inevitable awakening of a consciousness of separation, and a distrust and suspicion of those from whom they were so carefully guarded. The voters of Oregon might have felt that the mingling together, during a portion of their education, of the children of all races and sects might be the best safeguard against future internal dissensions with the consequent weakening of the community against foreign dangers." (p. 40.)

In the brief for the Attorney General the following argument is advanced:

> "The very able briefs filed on behalf of appellee in the lower court have failed to reveal any particular in which the alleged deprivation has operated to the disadvantage of either parents or children, except that it has deprived them of an opportunity to impart sectarian religious instruction in connection with the education of children in the schools. Having in mind the fixed purpose of our government in matters relating to the separation of church and state, the continued and consistent efforts that have been maintained to continue them as separate institutions, and the result of the vital legal struggles which have arisen over the question of sectarian instruction in the public schools, we submit that the reason why the people of the state of Oregon, under their initiative powers, have enacted a law requiring that all children shall be educated exclusively in the public schools, when their physical condition so permits, or at home, is apparent, and that in

making such provision they acted within well defined and well established powers of government. In its last analysis, the argument of appellee is that it demands, as a right guaranteed under the Constitution of the United States, the right to conduct an institution for the instruction of children of common school age in opposiion to the public schools maintained by the state, in order that it may therein give sectarian religious instruction which is prohibited in the public schools." (pp. 71, 72.)

1. *Juvenile Crime.*

We admit that juvenile crime has increased in vast proportions during the last few years. There is a Compulsory Education Law in Oregon which requires all children between the ages of nine and fifteen years to attend school. This law has been strictly enforced. The figures relative to the increase in attendance at public and private schools in Oregon during the past five years, as published in the official biennial reports of the State Superintendent of Instruction, are as follows:

	1920	1922	1924
Public School Attendance..	148,412	164,460	175,510
Private School Attendance.	8,477	6,331	5,994

The facts are, therefore, that in Oregon during the last five years, there has been a considerable increase in the attendance at the public schools, while the attendance at private schools has diminished. In the light of these facts, appellants cannot attribute the increase of juvenile crime in Oregon to increased attendance at the

private schools. With this condition existing, the Oregon voters had no right to believe that increased attendance at private schools has any connection with the increase in juvenile crime. The brief for the Governor, at page 46, says truly that "at present the vast majority of the private schools in the country are conducted by members of some particular religious belief." Unless we are to say that the precepts of religion breed criminals, the appellants have imputed to the Oregon voters an unreasoning basis of action.

Some of these assertions remind us of an observation by this court in *Lochner v. New York*, 198 U. S. 45, 62, concerning similar "thin and shadowy" contentions:

> "When assertions such as we have adverted to become necessary in order to give, if possible, a plausible foundation for the contention that the law is a 'health law,' it gives rise to at least a suspicion that there was some other motive dominating the Legislature than the motive to serve the public health or welfare."

2. *Religious Suspicion.*

The "rising tide of religious suspicion" does not proceed from the private schools, but it is directed against the instruction of children "along religious lines during the most susceptible years of their lives". In Oregon this suspicion has ripened into action. The very purpose of the law, implied in the argument of the Attorney General, is to prevent private schools from giving religious instruction. This, we will show, is an unlawful

purpose. But even if the object were lawful, it could not be attained by the use of prohibited means. The right to teach religion is included in the right of the free exercise of religion. When a penal law is aimed at religious instruction of the young "during the most susceptible years of their lives," the plastic age, when faith is implanted, principles inculcated, and character formed, we can readily see how effective it would be, and how nicely it is calculated to accomplish its purpose.

3. *The "Melting Pot".*

The "melting pot" argument, characterized by the lower court as "an extravagance in simile" (Transcript, p. 21) is pointedly answered in *Meyer v. Nebraska, supra,* by the statement that "a desirable end cannot be promoted by prohibited means" and that "the means adopted * * * exceed the limitations upon the power of the state and conflict with rights assured to plaintiff in error." It is also refuted by the following from *Buchanan v. Warley,* 245 U. S. 60, 81:

> "It is urged that this proposed segregation will promote the public peace by preventing race conflicts. Desirable as this is, and important as is the preservation of the public peace, this aim cannot be accomplished by laws or ordinances which deny rights created or protected by the federal Constitution."

4. *Church and State.*

There remains the argument based upon the separation of church and state. The existence of private

primary schools has no possible relation to the union of church and state. There are several non-sectarian private primary schools in Oregon, including Hill Military Academy, the other appellee. It is not explained why these schools were not excluded from the operation of the law. This appellee, with all other proprietors of private schools, is sincerely devoted to the principle of the separation of church and state. If a private educational institution, by instructing children in the religion of their parents, in some obscure way violates the policy of separation of church and state, then all religious teaching is a violation. This leads logically to the conclusion that the separation of church and state means that there shall be no church but only the state. And if the state can abolish worthy private schools for the single reason that they teach religion and morality, it has power to prohibit all religious instruction. This argument on church and state is unfortunate. It leads naturally to plainest invasion of constitutional rights.

In view of this argument of the Attorney General, it seems necessary that we state our position upon this important subject of religious education in private schools.

We believe that education in its highest and best sense denotes the drawing out and development of all of the faculties of man. It includes not only physical and mental training,—*mens sana in corpore sano*—but also the formation of character and directing and disci-

plining the will through instruction in religion and morality. We combine religion and morality, approving as we do these words of George Washington in his farewell address to the people of the nation:

> "Of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports. In vain would that man claim the attribute of patriotism who should labor to subvert these great pillars of human happiness, the firmest props of the duties of men and citizens. The mere politician, equally with the pious man, ought to respect and to cherish them. A volume could not trace all their connections with private and public felicity. Let it simply be asked, where is the security for property, for reputation, for life, if the sense of religious obligation *desert* the oaths which are the instruments of investigation in courts of justice? And let us with caution indulge the supposition that morality can be maintained without religion. Whatever may be conceded to the influence of refined education on minds of peculiar structure, reason and experience both forbid us to expect that national morality can prevail in exclusion of religious principles.
>
> "It is substantially true that virtue or morality is a necessary spring of popular government. The rule, indeed, extends with more or less force to every species of free government. Who, that is a sincere friend to it, can look with indifference upon attempts to shake the foundation of the fabric?"

Morality, then, being of such supreme importance to men and to government, and religion being thus in-

dispensable to morality, the appellee believes that instruction in religion and morality cannot be adequately accomplished unless it form an integral part of the daily education of youth, and a part no less vital than instruction in mathematics, the sciences, the languages, or any other branch of human knowledge. If one were required to make a choice between knowledge and the development of character, if either must be neglected, it should not be the development of character.

We fully accord to others the right to disagree with us and to act upon their own convictions. We would coerce no one to our way of thinking nor to our course of action. We advocate the enactment of no laws to compel others to adopt our views. But we claim the same right for ourselves, both as to our principles and our practices. These, we maintain, have no evil in them, but are worthy in themselves, are for the betterment of the individual and the state, are in harmony with American principles, and have received the approval of the wise and virtuous leaders of the nation from Washington to the present Chief Executive.

And any law, whether enacted by the people or their representatives, which purposes under the guise of separating church and state, to prevent private schools from giving religious education, and to deprive children of the blessings of such education, is not only extremely unwise, but is arbitrary, oppressive and violative of rights which, in this country for one hundred and thirty

years, have been considered to be of the very essence of liberty itself. We found these statements on the Constitutions of the United States and of the State of Oregon, on decisions of this Court and of the Supreme Court of the State of Oregon, on the well-known facts of history, and the commonly accepted fundamentals of American Government.

This court, in the opinion in the case of *Myer v. State of Nebraska, supra,* took occasion to quote from the celebrated Ordinance of 1787 these words:

> "Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged."

Mr. Story, in his work on Equity Jurisprudence, 2d Ed., Sec. 1341, says that parents are intrusted with the custody of their children "upon the natural presumption that the children will be brought up with a due education in literature, morals and religion."

The opinion in *Commonwealth v. Armstrong, supra,* says that:

> "The word 'education' in the statement of a father's duty toward a child, to the effect that it is his duty to provide for the child's education means not merely instruction in the pursuits of literature, but comprehends a proper attention to the moral and religious sentiments of the child."

All over this country, thinking men of today, as they look about and see the results of education that imparts knowledge, but fails to build up character through the aid of religion, as they view the increase of crime and the steadily declining moral standards of a great nation, are insisting that children shall receive religious instruction as part of their education, and that some way be devised to provide religious instruction for children attending the public schools.

The very law under which the appellee was created (Sec. 6698, Oregon Laws, et seq.), grants to religious societies the right to incorporate for the purpose of carrying out their objects, and by virtue of the provisions of that law the appellee, a religious society, bearing indeed the name of the Founder of Christianity, was commissioned to undertake the care and education of youth, and to establish and maintain schools for the care and education of youth.

Even as this is written, the Legislature of the State of Oregon (Thirty-third Legislative Assembly), has passed Senate Bill, No. 19, approved Feb. 9, 1925, which reads as follows:

> "Section 1. That any child attending the public school, on application of his guardian or either of his parents, may be excused from such school for a period or periods not exceeding one hundred and twenty (120) minutes in any week to attend week-day schools giving instruction in religion."

To urge the value of religion, and that it has a legitimate place in the education of youth, is only to demonstrate what is approved by the common opinion of mankind. If we are to be fettered by legislation induced by "skillfully directed agitation", to use the language of Mr. Justice McReynolds, which has for its object the suppression of religion, and to thwart the efforts of those who would lay the foundations of good citizenship by instilling into the minds of the youth of the land the principles of morality based on religion, then indeed, we have departed from the ideals of the men and women who came to this country from the old world—the Puritan to New England, the Quaker to Pennsylvania, the Catholic to Maryland—to escape the bane of religious persecution; and we have abandoned those benign principles of religious liberty which our forefathers wrote into the constitutions of the United States and of the separate states.

The first Amendment to the Constitution of the United States provides:

> "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof."

This guarantee of religious freedom is included within the "liberty" of the Fourteenth Amendment. *Meyer v. Nebraska, supra.*

The Oregon Constitution contains similar guaran-

ties in Article I, the Bill of Rights. Sec. 2 of that article, reads:

> "All men shall be secured in the natural right to worship Almighty God according to the dictates of their own consciences."

In Section 3, we find:

> "No law shall in any case whatever control the free exercise and enjoyment of religious opinion, or interfere with the rights of conscience."

Section 4 provides that:

> "No religious test shall be required as a qualification for any office of trust or profit."

Section 5, that:

> "No money shall be drawn from the treasury for the benefit of any religious or theological institution, nor shall any money be appropriated for the payment of any religious services in either house of the legislative assembly."

And Section 6, that:

> "No person shall be rendered incompetent as a witness or juror in consequence of his opinions on matters of religion, nor be questioned in any court of justice touching his religious belief to effect the weight of his testimony."

The courts give no narrow interpretation to these provisions, nor do they hold that the rights therein expressed are grudgingly conceded. Both the Supreme Court of Oregon and the Supreme Court of the United

States have declared that in the guaranty of religious liberty is included the right to teach religion, and this court has held that for the Federal Government to withhold trust moneys from the Indians in order to prevent them from receiving religious education at their own expense, would be to prohibit the free exercise of religion among the Indians.

In the case of *Liggett v. Ladd,* 17 Or. 89, 94, we find this language:

> "The right of mankind to believe and *teach* such doctrines regarding religion as meet the approval of their consciences is recognized under our form of government as inherent; it is *freely* accorded to every sect and denomination in the land, and is so interwoven with the principles which underlie our political fabric that it cannot be taken away without the general consent or a violent revolution. The law not only tolerates the privilege, but protects every one in the enjoyment of it. The people are entitled, as an incident of such right, to form associations, adopt creeds, organize churches, and establish seminaries of learning for the advancement of their peculiar tenets of faith, and to acquire property and erect buildings to aid them in accomplishing that end."

In *Watson v. Jones,* 13 Wall, 679, 728, the Supreme Court said:

> "In this country the *full* and *free* right to entertain any religious belief, to practice any religious principle, and to *teach* any religious doctrine which does not violate the laws of morality and

> property, and which does not infringe personal rights, is conceded to all. The law knows no heresy, and is committed to no dogma."

The case of *Reuben Quickbear v. Francis E. Leupp,* 210 U. S. 50, bears directly on this phase of the controversy.

This case involved the right of the Secretary of the Interior to enter into contracts with the Bureau of Catholic Indian Missions, by which certain moneys known as "treaty funds" and "trust funds," should be paid over to the Bureau to be used for the support, education and maintenance of Indian pupils of the Sioux tribe of Indians at the St. Francis Mission Board School on the Rosebud reservation. The payment of money upon such contracts by the Secretary of the Treasury was sought to be enjoined on the ground that Congress had in the year 1896 declared it to be:

> "the settled policy of the Government to hereafter make no appropriation whatever for education in any sectarian school."

These treaty funds and trust funds, as the Supreme Court held, were moneys which belonged really to the Indians, and the Court decided that to pay such moneys out under a contract with the Bureau of Catholic Indian Missions, was not an "appropriation" within the meaning of the expression of Congress above quoted.

In addition to the holding on that question, the

Court said in answer to a contention very similar to that of the Attorney-General (p. 81):

> "But it is contended that the spirit of the Constitution requires that the declaration of policy that the government 'shall make no appropriation whatever for education in any sectarian schools' should be treated as applicable, on the ground that the actions of the United States were to always be undenominational, and that, therefore, the government can never act in a sectarian capacity, either in the use of its own funds or in that of the funds of others, in respect of which it is a trustee; hence, that even the Sioux trust fund cannot be applied for education in Catholic schools, even though the owners of the fund so desire it. But we cannot concede the proposition that Indians cannot be allowed to use their own money to educate their children in the schools of their own choice because the government is necessarily undenominational, as it cannot make any law respecting an establishment of religion or prohibiting the free exercise thereof. The court of appeals well said: 'The treaty and trust moneys are the only moneys that the Indians can lay claim to as matter of right; the only sums on which they are entitled to rely as theirs for education; and while these moneys are not delivered to them in hand, yet the money must not only be provided, but be expended, for their benefit, and in part for their education; *it seems inconceivable that Congress shall have intended to prohibit them from receiving religious education at their own cost if they desire it; such an intent would be one to prohibit the free exercise of religion amongst the Indians,* and such would be

the effect of the construction for which the complainants contend."

By confession of the Attorney General of the State of Oregon, commendable for its frankness, though astonishing in its import, we have it that the School Law was enacted to prevent private schools from giving religious instruction to the young. If this be so, the law must be held unconstitutional because the end is clearly not one within the competency of the State to accomplish. That purpose is to prohibit the free exercise of religion.

VII.

THE ACT IMPAIRS THE OBLIGATION OF APPELLEE'S CONTRACT WITH THE STATE ARISING OUT OF ITS CHARTER.

Ever since the famous decision in the *Dartmouth College Case* it has been settled law that the charter of a corporation constitutes a contract between the corporation and the State under whose laws it was organized, the obligations of which cannot be impaired by subsequent legislation.

Dartmouth College v. Woodward, 4 Wheat 518.
Carondelet Canal Co. v. State, 233 U. S. 362; 34 Sup. Ct. 627.
Wilmington Co. v. Alsbrook, 146 U. S. 279; 13 Sup. Ct. 72.

Louisville Gas Co. v. Citizens Co., 115 U. S. 683; 6 Sup. Ct. 265.
Liggett v. Ladd, 17 Or. 89.
Lorntsen v. Union Fisherman's Co., 72 Or. 540.

The contract consists of the offer by the statute and a compliance with its terms. The rights granted by the charter are stated in the law under which the corporation was formed and in the Articles of Incorporation drawn in accordance with that law. By Article II of the Articles of Incorporation of appellee it is provided that the purposes of the appellee should be, among others, the following:

> "The care of orphans and the education and instruction of youth, and to establish and maintain academies or schools for the care and education of youth in the cities and towns of the State of Oregon."

And by Article III it is provided:

> "* * * and the income and revenue are derived from tuition charged for the education and instruction of youth."

At the time of the original incorporation of appellee the Act under which it was incorporated provided only for the incorporation of churches and religious, benevolent, literary and charitable societies. See *Deady's Code (1886), pages 632-634.* Afterwards and at the Legislative Assembly of 1903 an act was passed authorizing the incorporation of educational corporations under the

same act. See pages *176 and 177 of General Laws of Oregon for 1903.* This latter act contains a provision that where educational corporations have attempted, prior to 1903, to incorporate under the original act and had properly filed their articles of incorporation, their articles were ratified and confirmed and from 1903 on they should be deemed bodies corporate under the act.

On November 11, 1880, appellee duly filed with the Secretary of State and with the County Clerk of Multnomah County, Oregon, its Articles of Incorporation, a copy of which is attached to the bill of complaint. (Transcript p. 14).

The said acts grant to corporations organized thereunder the right to incorporate for the purpose of carrying out the objects of such educational society, and confer on the corporation, among others, the powers:

1. To sue and be sued;
2. To contract and be contracted with;
3. .....

4. To purchase, receive, possess and dispose of such real and personal property as may be necessary or convenient, to carry out the object of said corporation.

There was therefore a direct grant to appellee by the State of the right, as a corporation, to pursue and carry on the educational business of conducting schools, that appellee was theretofore conducting as a society; and a right to contract concerning that business and the

right to be contracted with by others concerning the same; and a right to acquire and possess property, including the building up and enjoyment of a good will and patronage for that business, necessary or convenient to carry out the object of the corporation.

The contract between the State and the appellee very clearly confers upon and vests in it certain rights, particularly those just mentioned, so that when the School Law was enacted in 1922, appellee was then possessed of and there were then vested in it the right to conduct its schools and receive its income and revenue therefrom, and the right to possess real and personal property for the purpose of conducting those schools, and the right to enjoy the good will and patronage of its schools. These were all vested rights.

There is not in the acts, under which appellee was organized any reserve clause, whereby the Legislature reserved power to amend, alter or repeal any of the charters created under those acts, or power to amend, alter or repeal those acts themselves so as to affect in any way corporations organized prior to the amendment, alteration or repeal.

The obligations assumed by the State in the contract are that appellee should possess the right to conduct and carry on its business of operating schools, and to receive therefrom its income and revenue; and to possess property for school purposes; and to possess and enjoy the good will and patronage of its schools.

Can it be said that an act which prohibits appellee from conducting and carrying on its schools, which renders valueless its property devoted to school purposes, and which deprives plaintiff of the good will and patronage of its schools, does not impair the obligations of this contract?

The Supreme Court of Oregon has held in two cases that a corporation organized under the general corporation laws of Oregon has a valid right in the name conferred upon it by its Articles of Incorporation and that a subsequent act of the Legislature attempting to change that name or make it unlawful to use it was an impairment of the obligation of the contract and deprived the corporations of their property without due process of law.

Liggett v. Ladd, 17 Or. 89.
Lorntsen v. Union Fishermen's Co., 71 Or. 540.

Sometimes general corporation laws contain a reservation of power in the state whereby those laws may be amended, altered or repealed, without any limitation whatever, so that such general laws after amendment or alteration become the measure of power which a previously organized corporation possesses; or, in case of a subsequent repeal, the corporation may be dissolved and terminated altogether.

The well known case of *Berea College v. Kentucky 211 U. S. 45; 29 Sup. Ct. 33,* illustrates this situation.

Where such are the facts, a corporation cannot complain that some subsequent legislation operates to impair the obligation of its contract with the state, because the reserved power in the law, under which the corporation was formed, becomes a part of the contract and authorizes the state to make such amendments and alterations as it sees fit, even to terminating the corporation altogether.

By *Section 2 of Article XI of the Oregon Constitution* as it was prior to the 1906 amendment and at the time of plaintiff's incorporation, it was provided:

> "Corporations may be formed under general laws, but shall not be created by special laws, except for municipal purposes. All laws passed pursuant to this section may be altered, amended, or repealed, but not so as to impair or destroy any vested corporate rights." Bellinger & Cotton's Ann. Code, p. 60.

The effect of this section is an inhibition against any subsequent legislation by way of amendment or repeal that shall impair or destroy any rights acquired by the corporation by its organization and compliance with the corporation laws of the state. The right reserved to the state is to amend and repeal its corporation laws with reference to prospective corporations, and to amend and alter them as to both prospective and existing corporations in matters which do not impair or destroy the grants of power and rights enjoyed by existing corporations. In other words, insofar as the corporation laws

grant rights and powers, which become vested in some corporation by its acceptance of and acting upon them, the legislature is prohibited from either altering, amending or repealing them. The power reserved to alter, amend or repeal is limited to such matters as will neither impair nor destroy the rights and powers granted to existing corporations.

Such is the interpretation placed by the Oregon Supreme Court upon *Section 2 of Article XI of the Oregon Constitution* as it stood when plaintiff was incorporated. Such is the plain holding of the case of *Lorntsen v. Union Fisherman's Co., 71 Or. 540.*

In that case the defendant, whose full name was Union Fishermen's Co-operative Packing Co., was a corporation organized before the amendment of *Section 2 of Article XI of the Constitution.* Afterwards the legislature enacted what is known as the Co-operative Association Act, which provided for the incorporation of co-operative associations. Among the provisions of this latter Act is a prohibition, enforced by a penalty, against any person or corporation, other than one incorporated under the Act, using the word "Co-operative" as a part of its name. Defendant's corporate name contained that word. The Supreme Court held that the grant by the State to defendant of its corporate name was a right vested in the defendant to use that name, and that the State could not, under *Section 2 of Article XI of the Constitution*, alter or amend that right.

Mr. Justice Burnett, who wrote the opinion, said:

"Under this statute the defendant was organized as a corporation, and has since then conducted its affairs using the corporate name there specified. The substance of the situation is that through this statute the state offered certain corporate privileges and immunities to those who accepted its terms, which offer was accepted in this instance by the filing of articles of incorporation and organization of the defendant.

"From Dartmouth College v. Woodward, 4 Wheat. 518 (4 L. Ed. 629), down to the present time, the principle has been maintained that such an offer and acceptance constitute a contract between the state and the corporation, the obligation of which cannot be impaired by any subsequent legislation. It is a compact which is within the protection of Article I, Section 10 of the national Constitution forbidding any state to pass any law impairing the obligation of contracts, and Article I, Section 21, of our state Constitution, containing the same prohibition. The identical question has been settled by the utterances of Mr. Chief Justice Thayer in Liggett v. Ladd, 17 Or. 89, 100 (21 Pac. 133, 137):

" 'The legislature cannot alter the charter of any private corporation. The old case of Dartmouth College v. Woodward, 4 Wheat. 518 (4 L. Ed. 629), settles that question. * * * When the Corvallis College was organized into a corporation, the name it assumed and by which it was to be known, was specified in its articles of incorporation; and the legislature had no power to change it, or to merge the corporation into another organization, either real or imaginary.' "

The Court further said on page 545 of the 71st Oregon Report:

> "It is plain that in this respect the Act, as applied to a corporation already in existence when it was passed, is unconstitutional, in that it violates the charter or contract with the State. By the terms of the Constitution, as it then stood, a part of that contract was that, while the legislature could amend or repeal laws relating to the formation of corporations, it could not impair nor destroy any vested corporate rights. All the cases cited by plaintiff on the subject of charter changes are those where unlimited power was reserved for that purpose, or the change was consented to by the corporation."

The "terms of the Constitution" alluded to by Mr. Justice Burnett in the foregoing quotation were the provisions of *Section 2, Article XI*, before its amendment.

The interpretation thus placed upon that constitutional provision by the Oregon Supreme Court is that it inhibits the State from altering, amending or repealing powers and rights, which the state has actually granted to existing corporations, and permits the amendment or alteration or repeal of corporation laws in their prospective operation only. The construction of the Oregon Supreme Court is exactly the same as though the constitutional provision read as follows: "All laws passed pursuant to this section may be altered, amended or repealed in their prospective operation, but cannot be altered or amended or repealed so as to impair or

destroy any power or right granted by the State to an existing corporation." In the Lorntsen case subsequent legislation, which compelled a mere change in the name of an existing corporation, was held unconstitutional and void as impairing the obligation of the corporate contract and as destroying a vested right of property possessed by defendant. The vested right was the right granted by defendant's charter to use the corporate name. It differs in kind or character not at all from the vested rights granted to and possessed by appellee in this suit, which are being impaired and destroyed by the school law. The right to conduct schools and therein educate youth; the right to receive, from the tuition charged in said schools, income and revenue; the right to acquire and possess property for school purposes, including the good will and patronage of the schools, are all granted to appellee by its compliance with the existing corporation laws. And these rights are just as valuable and were as certainly granted and vested as was the right to use the corporate name.

The same interpretation of the Oregon Constitution was made by the Oregon Supreme Court in *Liggett v. Ladd, 17 Or. 89,* which is cited in the *Lorntsen Case.*

The interpretation by the Oregon Supreme Court of the Oregon Constitution is binding and conclusive upon the United States Courts.

U. S. Const. Art. IV. Sect. 1.
Wade v. Travis, 174 U. S. 509.

Fairfield v. Gallatin County, 100 U. S. 359.
Luther v. Borden, 7 How. (U. S.) 1.

The decisions in the *Liggett v. Ladd* and in the *Lorntsen* cases being binding on the Federal Courts, the *Berea College Case*, 211 U. S. 45, and similar cases, are entirely inapplicable. Those cases are founded on the proposition that the enabling act or the constitution reserved an unlimited power to amend, alter and repeal corporate charters and, therefore, the corporation could not complain of any legislative act, special or general, which impaired or destroyed its corporate rights.

In this case, however, neither the enabling act nor the constitution reserved any such power, but, on the other hand, as interpreted by the Oregon Supreme Court, the Oregon Constitution expressly inhibits any legislation which shall impair or destroy the rights and powers granted by the State to corporations.

Section 10 of Article 1 of the United States Constitution provides that:

> "No state shall * * * pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts."

The Act manifestly violates this inhibition because its provisions and the result of its going into effect will and do impair the obligations of the contract between the State of Oregon and appellee.

Nothing better illustrates our point than a comparison of the *Berea College Case* with the case of *Chicago*

Co. v. Wisconsin, 238 U. S. 491. In the former it was held that the state might, under reserved power in their constitutions or corporation laws, amend and alter corporation charters at will. The latter case held that under such reserved powers the state could not alter or amend charters. This apparent conflict is readily explained when it is seen that the *Berea College Case* so held because that was the construction placed upon the constitution and laws of Kentucky by the Supreme Court of Kentucky; and the *Chicago Co. v. Wisconsin Case* so held because that was the construction placed upon the constitution and laws of Wisconsin by the Supreme Court of Wisconsin.

On this point, therefore, the Supreme Court of Oregon in the cases of *Liggett v. Ladd, supra,* and *Lorntsen v. Union Co., supra,* has already said the last word.

While it is true, as counsel for the appellants urge, that the State cannot bargain away its police power, and consequently that laws enacted in the exercise of that power do not impair the obligation of contract, yet this latter doctrine is necessarily qualified by the condition that such laws must be a legitimate exercise of the police power. Acts which are a pretended exercise of that power, but which bear no reasonable relation to any end which the State is competent to effect, may constitute an impairment of the obligation of a contract.

The case of *State v. Richmond & Danville R. R. Co.,*

73 N. C. 527, was a criminal prosecution for the violation by the defendant of a law prohibiting it from changing the gauge of its railroad track. The company claimed that the law violated its charter, and the state that the law was passed in the exercise of its police power. The Court held that it was not a valid exercise of police power, and therefore impaired the obligation of the contract arising out of the company's charter. It was said at page 433:

> "A state cannot violate its contract under a pretended act of its police power. The act must be *bona fide* intended to relieve some evil within the reach of that power, and strictly applicable to that end."

In the case of *P. W. & B. R. R. Co. v. Bowers,* 4th Houst. (Del.) 506, the Court held invalid as impairing the obligation of the contract created by the company's charter a law of the state which assumed the right to adjust the tariffs for the railroad. At page 537 the Court, after giving instances of acts which the state could legally pass as police regulations, said:

> "Such acts leave the franchise unimpaired and simply regulate the exercise of it in some particulars plainly essential to the general safely, health, or comfort of society. But quite different are acts which directly touch the constitution of the corporation, or abridge or modify any of those corporate powers which are essential to the very ends of its creation; such powers, for example, as the right to operate a railroad at all,

> the right to take tolls or fares and freights, or to adjust their tariff of such charges. These are not police regulations, but are in substance and effect amendments of the charter, and it is most obvious that, if under color of the police power, corporations may be thus dealt with, the constitutional provision, so solemnly adjudged by the Superior Court to be a protection to their rights is, after all, as to them wholly nugatory."

Again it was said at page 533:

> "Now, what will or will not amount to such a material alteration of the charter as to bring a law into conflict with the constitutional prohibition it may not be easy to define, but it is sufficient and quite safe to say that an act having the effect to abridge or restrict any power or privilege vested by the charter which is material to the beneficial exercise of the franchise granted, and which must be supposed to have entered into the consideration which induced the corporators to accept the charter and to assume the duties imposed by it, is such an alteration as the constitutional provision forbids, and that any act so operating is invalid."

But even where their exists in the State the reserved power to alter or amend corporate charters, this power is not unlimited, and must not be exercised in an unreasonable or offensive manner, or so as to "abridge * * * those corporate powers which are essential to the very ends of its creation."

In the case of *Chicago M. & St. P. R. Co. v. Wisconsin*, 238 U. S. 491, 35 Sup. Ct. 869, the Court held

unconstitutional a statute prohibiting a railroad company from lowering the upper berths in a sleeping car when they were not occupied. With reference to the question of impairment of the company's contract, the Court, by Mr. Justice Lamar said (p. 501):

> "In the brief of counsel for the state it is argued that the statute can be sustained as a valid exercise of the state's reserved power to alter the charter of the company. That question does not seem to have been raised in the state court, nor was its decision based on that proposition. Indeed, such a ruling would seem to have been opposed to State ex. rel. Northern P. R. Co. v. Railroad Commission, 140 Wis. 157, 121 N. W. 919, and the Water Power Cases, 148 Wis. 124, 38 L. R. A. (N. S.) 526, 134 N. W. 330, where it was held that the right to amend a charter does not authorize the taking of the company's property without just compensation. The same view has been repeatedly expressed in the decisions of this court. For example, in Shields v. Ohio, 95 U. S. 324, 24 L. Ed. 359, it was said that 'the power of alteration and amendment is not without limit. The alterations must be reasonable * * * and be consistent with the scope and object of the act of incorporation.' * * * Again, in Stearns v. Minnesota, 179 U. S. 223, 259, 45 L. Ed. 162, 180, 21 Sup. Ct. Rep. 73, it was held that the reserved right to amend a corporate charter 'does not confer mere arbitrary power, and cannot be so exercised as to violate fundamental principles of justice by * * * taking of property without due process of law.' Lake Shore & M. S. R. Co. v. Smith, 173 U. S. 690, 43 L. Ed. 861, 19 Sup.

> Ct. Rep. 565; Stanislaus County v. San Joaquin & K. River Can & Irrig. Co., 192 U. S. 201, 48 L. Ed. 406, 24 Sup. St. Rep. 241; Sinking Fund Cases, 99 U. S. 720, 25 L. Ed. 501; Miller v. New York, 15 Wall. 498, 21 L. Ed. 104; see also Delaware L. & W. R. Co. v. Public Utilities, 85 N. J. L. 28, 38, 88 Atl. 849, where it was held that, under such a power, the company could not be required to furnish free transportation to certain designated officials."

The unreasonableness of the School Law has been shown; that it is inconsistent with the scope and object of the appellee's charter cannot be controverted.

VIII.

The Court Has Jurisdiction of the Cause

Two questions will be considered here: First, has the appellee capacity to bring this suit? Second, is the suit premature? The discussion will be brief, as the Attorney General has expressly waived argument on these points, and has asked the Court to determine the constitutional questions. (Brief, p. 12.)

(a) The general rule respecting the right of a person to test the constitutionality of a statute is stated in 12 *Corpus Juris*, at p. 763, as follows:

> "Any person whose rights are prejudiced by the operation of the statute may raise the question as to its constitutionality. Thus a person may question the constitutionality of a statute

> the effect of which is to deny him a right that otherwise he would have. A corporation may invoke the protection of the constitution to the same extent as an individual."

In another part of this brief, the injurious effect of the operation of the School Law on appellee has been shown, and we will not go over that ground again.

The fact that the statute is not directed against the appellee *eo nomine* can make no difference when its inevitable effect is to inflict direct and certain injury upon it. This rule is applied in ***Truax v. Raich, supra,*** where the alien employee on whom the statute laid no command, maintained a suit to enjoin its enforcement; and likewise in the case of ***Nebraska District v. McKelvie, supra,*** where the corporation was permitted to sue to prevent the prosecution of its teachers. See also ***Terrace v. Thompson, supra, Savage v. Jones,*** 225 U. S. 501 and ***Buchanan v. Warley, supra.***

(b) The suit is not premature. At the time the appellee filed its Bill of Complaint, the injury to its schools had already commenced, as the direct result of the appellants' threats to enforce the School Law, and to prosecute parents who should refuse to send their children to the public schools. Feeling that the schools of the appellee would be compelled, for lack of patronage, to close by September, 1926, parents had commenced to withdraw their children from the appellee's schools, and to transfer them to others, known to be

permanent. From this naturally followed impairment of credit, and inability of appellee to raise funds for repairs, improvements and expansion. Its schools were in fact moribund institutions, condemned as unlawful, their term of life limited by popular decree. The lower court said concerning this situation:

> "Now, although the time at which the act is to become effective is somewhat remote, it is quite apparent, from the allegations of the bill, the work of destruction of complainants' occupation has already set in. They are losing their patronage, traceable directly to the fact that the act is a statute duly adopted and promulgated. Parents are looking to the future, and are laying their plans to meet the exigencies to arise. The curriculum of the grade schools requires several years of attendance, and if parents must, on the taking effect of the statute, send to the public schools many of them are prepared to do so now, or as convenience may suggest. Hence the drawing away of complainant's patronage has set in, and will continue with increased progression until the day when all will be lost. This is not only the alleged result of the passage of the act, but it is the most natural and consequential thing to expect. The damage, of course, is irreparable, and compensation does not afford adequate relief. The injury being of a quality that is continuing and accelerating, it must be staid if the ends of justice are to be met. * * *
>
> "The very purpose of placing the effective date so far ahead was to give ample time for the parochial and private schools to adjust themselves to the new conditions, which is really a con-

fession on the part of the lawgivers that such schools are going to be hurt, and that seriously, if not irreparably." (Transcript, pp. 24 and 25.) 296 Fed. 933.

The injury sustained by the appellee is thus attested in the appellants' Motion to Advance filed herein:

> "That the effect of the present uncertainty regarding the validity of said statute is to cause parents, guardians and others having in charge the education of children who are, or will be, affected by the provisions of said statute, to transfer many of such children from private and parochial institutions to the public schools, to the material disadvantage and financial injury of the persons, corporations, etc., owing and conducting such private and parochial institutions, and contrary to the wishes of the parents, guardians, etc., of said children, if said statute is unlawful."

It further appears in the Motion to Advance:

> "That if said statute shall be held by this court to be valid the effect thereof will be to increase the attendance at certain of the grade schools of the State of Oregon, and to require arrangements to be made for additional facilities for the housing and instruction of children who will attend the said schools.
>
> "That in the ordinary course of events a decision of this court in the said cause will not be rendered in time to permit of arrangements for such increased facilities being made after said decision and by the time same will be required, should the said statute be held valid, but that if the said cause may be heard and determined at

> this term all parties concerned will have notice of such decision in time to make necessary arrangements required thereby prior to said September 1, 1926, or to avoid unnecessary expenditures for said additional facilities should the decision of this court be that said statute is invalid."

The general rule applicable is stated by Mr. Justice Butler in the case of *Terrace v. Thompson, supra.* as follows (263 U. S. 214):

> "Equity jurisdiction will be exercised to enjoin the threatened enforcement of a state law which contravenes the Federal Constitution wherever it is essential in order effectually to protect property rights and the rights of persons against injuries otherwise irremediable; and in such a case a person, who as an officer of the State is clothed with the duty of enforcing its laws and who threatens and is about to commence proceedings, either civil or criminal, to enforce such a law against parties affected, may be enjoined from such action by a Federal court of equity."

Though the time for the Act to go into effect was, as the lower court said "somewhat remote," yet, in view of the injury which had already set in, and its progressive and cumulative character, as well as the inevitability of the enforcement of the Act, there ought to be no question but that the lower court was right in exercising the beneficient power of a court of equity to stay the injury. The fact that there is no precise precedent is of small importance.

It is said *32 Corpus Juris, p. 14. Sec. 13:*

> "It is not a fatal objection that the use of the writ for the particular purpose for which it is sought is novel. Courts may amplify remedies and apply rules and general principles for the advancement of substantial justice. If that were not so, and courts were confined to particular precedents, there would be no power to grant relief in new cases constantly occurring."

In *Toledo, A. A. & N. M. Ry. Co. v. Pennsylvania Co.*, 54 Fed. 746, 751, we find this language:

> "It is said the orders issued in this case are without precedent. Every just order or rule known to equity courts was born of some emergency, to meet some new conditions, and was, therefore, in its time, without a precedent. If based on sound principles, and beneficent results follow their enforcement, affording necessary relief to the one party without imposing illegal burdens on the other, new remedies and unprecedented orders are not unwelcome aids to the chancellor to meet the constantly varying demands for equitable relief. Mr. Justice Brewer, sitting in the circuit court for Nebraska, said:
>
> > " 'I believe most thoroughly that the powers of a court of equity are as vast, and its processes and procedure as elastic, as all the changing emergencies of increasingly complex business relations and the protection of rights can demand.' "

In the case of *Nashville C. & St. Ry. Co. v. McConnell*, 82 Fed. 65, 76, the court said:

"I return now to the argument based on the ground that this is a novel application of the injunction, not sanctioned by previous precedent directly in point. This argument, carried to its full logical result, would have prevented the enunciation of the first equitable principle and the establishment of the first equitable precedent for the preventive remedy. It is, indeed, an age-worn argument. It has been employed from the beginning of equity jurisprudence as a part of the objection to the extension of the equitable remedy to new conditions and new cases. This is the well-known history of the subject. Of course, this contention has been overruled, and precedent after precedent established from time to time to meet new conditions and to do full justice, until the argument has long since lost most of its force, although it is still maintained in form. It has been in answer to arguments like this that the great chancellors have stated time and again that they decline to lay down any definite rules as to when a court of equity will interpose by injunction. In fact, to do so would at once put a limit to all progress in equitable jurisprudence. The most that has been said is that in the use of the writ of injunction the court exercises sound discretion regulated by analogy; by what would be manifestly just in view of all the existing conditions, and requiring as a condition that there is no adequate remedy at law. Beyond this the courts have not gone, in the way of placing a limit on their power. It must be recognized that jurisprudence, both legal and equitable, both in respect of the right and the remedy is progressive, that it is expansive, and that, while its great principles remain good for one time as well as another, these principles must be extended to new

> conditions, and this involves an extension of the remedy, and often a change in the form of the remedy. Making the injunction mandatory as well as preventive is an example of such a change. Any system of jurisprudence coming short of this would fail to meet the demands of civilization."

In *Dodge v. Cole*, 97 Ill. 338, 364, it is said:
is said:

> "The jurisdiction of a court of equity does not depend upon the mere accident whether the court has, in some previous case, or at some distant time, granted relief under similar circumstances, but rather upon the necessities of mankind, and the great principles of natural justice, which are recognized by the courts as a part of the law of the land, and which are applicable alike to all conditions of society, all ages and all people. * * * When it is clear the circumstances of the case in hand require the application of those principles, the fact that no precedent can be found in which relief has been granted under a similar state of facts, is no reason for refusing it."

The principle runs through the decisions that one does not have to await the consummation of threatened injury before applying for injunctive relief. Thus, it is said in *Vicksburg Waterworks Co. v. City of Vicksburg*, 185 U. S. 65, 82:

> "It is further contended that the bill does not disclose any actual proceeding on the part of the city to displace complainant's rights under the contract, that mere apprehension that illegal

action may be taken cannot be the basis of enjoining such action, and that therefore the Circuit Court did right in dismissing the bill. We cannot accede to this contention. It is one often made when bills in equity are filed to prevent anticipated and threatened action. But it is one of the most valuable features of equity jurisdiction, to anticipate and prevent a threatened injury, where the damages would be insufficient or irreparable. The exercise of such jurisdiction is for the benefit of both parties, in disclosing to the defendant that he is proceeding without warrant of law, and in protecting the complainant from injuries which, if inflicted, would be wholly destructive of his rights."

The *Vicksburg Waterworks* case is cited in the somewhat similar case of *Palatka Waterworks v. City of Palatka*, 127 Fed. 161, as authority for entertaining jurisdiction of a suit to enjoin enforcement of an ordinance before the time fixed for it to go into effect, the Court saying that the company is not required to wait until the city has taken some further step to displace its alleged rights under the contract, and then sue for damages.

In the case of *Pennsylvania v. West Virginia*, 262 U. S. 553, 592, Mr. Justice Van Devanter said:

"The second question is whether the suits were brought prematurely. They were brought a few days after the West Virginia act went into force. No order under it had been made by the Public Service Commission; nor had it been tested in

> actual practice. But this does not prove that the suits were premature. Of course they were not so, if it otherwise appeared that the act certainly would operate as the complainant States apprehended it would. One does not have to await the consummation of threatened injury to obtain preventive relief. If the injury is certainly impending, that is enough."

For other applications of the principle, see *Detroit Creamery Co. v. Kinnane,* 264 Fed. 845 (affirmed 252 U. S. 102); *Willcox v. Consolidated Gas Co.,* 212 U. S. 19; *Leverich v. Mayor, etc., of Mobile,* 110 Fed. 170; *Davenport v. Kleinschmidt,* 6 Mont. 502.

The case of *Terrace v. Thompson, supra,* is also a valuable precedent. Although the act was in effect there was no violation thereof by the plaintiffs. Nevertheless the Court sustained a suit brought to enjoin enforcement of the Act, because, as stated by Mr. Justice Butler (263 U. S. 215),

> "the threat to enforce it constitutes a continuing unlawful restriction upon and infringement of the rights of appellants as to which they have no remedy at law which is as practical, efficient or adequate as the remedy in equity."

In connection with the showing under the Amended Bill (Par. XIX, Transcript, p. 12), and also in the Motion to Advance, as to the public importance of this suit, and the profound interest that the people of Oregon have in its early determination, attention is called

to the following language from the opinion in *Detroit v. Detroit Citizens Street Ry. Co.*, 184 U. S. 368:

> "It is a matter of general public interest, as well as of vital importance to the complainant, that the question involved in this litigation be determined at the earliest possible moment, and once for all, and thus a multiplicity of suits and other complications be prevented."

Conclusion

We submit, therefore, that the measure under review bears no relation to the public health, morals, safety or welfare; that it is not a statute of regulation, but of prohibition, and that it deprives appellee of its property without due process of law. Its real purpose, in the guise of police regulation, is to destroy private primary schools in Oregon. That would be its immediate effect. But the principle involved is of vital interest to all private schools in this country of every grade and class. If the state can thus destroy the primary school, it can destroy the secondary school, the college and the university. However inveterate our habits of classification, there is no real basis to distinguish a primary school from a university in the matter of interference by the state. Every argument advanced in support of this measure could be urged with equal propriety and force in favor of a similar measure aimed at universities under private management and control. Harvard, Yale, Columbia,

Princeton or any of the other great private institutions of learning would be quite as amenable to this sort of interference as the humblest primary school in a remote district of Oregon. All could be swept away, and with them would depart an influence and an inspiration that this country can ill afford to lose. The whole province of education could be taken over by the state, and only those subjects taught, and those theories and doctrines expounded to which the state should give its approval.

The legislation is revolutionary in character. The power assumed by its enactment has never before been asserted in America. It cannot be that such a power really exists, or is compatible with the spirit of our free institutions.

The School Law is unconstitutional and void, and the decree of the lower court should, therefore, be affirmed.

Respectfully submitted,

J. P. KAVANAUGH,
JAY BOWERMAN,
DAN J. MALARKEY,
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Counsel for Appellee.

Appendix A.

(Ballot Title of School Law)

A MEASURE.

To amend section 5259, Oregon Laws, relating to compulsory education, to be submitted to the legal electors of the state of Oregon for their approval or rejection at the regular general election to be held November 7, 1922; proposed by initiative petition filed in the office of the secretary of state of the state of Oregon, July 6, 1922.

The following is the form and number in which the proposed measure will be printed on the official ballot:

Initiative Bill—Proposed by Initiative Petition.

Initiated by Ira B. Sturges, Baker, Oregon; Dr. Robert C. Ellsworth, Pendleton, Oregon; Harold Baldwin, Prineville, Oregon; W. B. Daggett, Redmond, Oregon; Lewis H. Irving, Madras, Oregon; Collin E. Davis, The Dalles, Oregon; Leslie G. Johnson, Marshfield, Oregon; C. A. Swope, Grants Pass, Oregon; W. F. Harris, Roseburg, Oregon; John R. Penland, Albany, Oregon; J. R. Jeffrey, Seaside, Oregon; F. C. Holibaugh, St. Helens, Oregon; O. O. Hodson, McMinnville, Oregon; E. L. John-

son, Hillsboro, Oregon—COMPULSORY EDUCATION BILL—Purpose: Requiring any parent, guardian or other person having control, charge or custody of a child over eight and under sixteen years of age, from and after September 1, 1926, to send such child to a public school during the entire school year, excepting: '(a) children physically unable; (b) children who have completed the eighth grade; (c) children between the ages of eight and ten living more than one and one-half miles, and children over ten years of age living more than three miles from a public school, except when transportation is furnished; '(d) children taught by parent or private teacher.

Vote YES or NO

314 Yes.

315 No.

Appendix B

(Affirmative argument printed in official pamphlet by proponents of School Law.)

"Do you believe in our public schools?

Do you believe they should have our full, complete and loyal support?

What is the purpose of our public schools, and why should we tax ourselves for their support?

Because they are the creators of true citizens by common education, which teaches those ideals

and standards upon which our government rests.

Our nation supports the public school for the sole purpose of self-preservation.

The assimilation and education of our foreign born citizens in the principles of our government, the hopes and inspiration of our people, are best secured by and through attendance of all children in our public schools.

We must now halt those coming to our country from forming groups, establishing schools, and thereby bringing up their children in an environment often antagonistic to the principles of our government.

Mix the children of the foreign-born with the native-born, and the rich with the poor. Mix those with prejudices in the public school melting pot for a few years while their minds are plastic, and finally bring out the finished product—a true American.

The permanency of this nation rests in the education of its youth in our public schools, where they will be correctly instructed in the history of our country and the aims of our government, and in those fundamental principles of freedom and democracy, reverence and righteousness, where all shall stand upon one common level.

When every parent in our land has a child in our public schools, then and only then will there be a united interest in the growth and higher efficiency of our public schools.

Our children must not under any pretext, be it based upon money, creed or social status, be divided into antagonistic groups, there to absorb the narrow views of life, as they are taught. If they are so divided, we will find our citizenship composed and made up of cliques, cults and factions, each striving, not for the good of the whole,

but for the supremacy of themselves. A divided school can no more succeed than a divided nation.

The inspiration for this act is the following resolution:

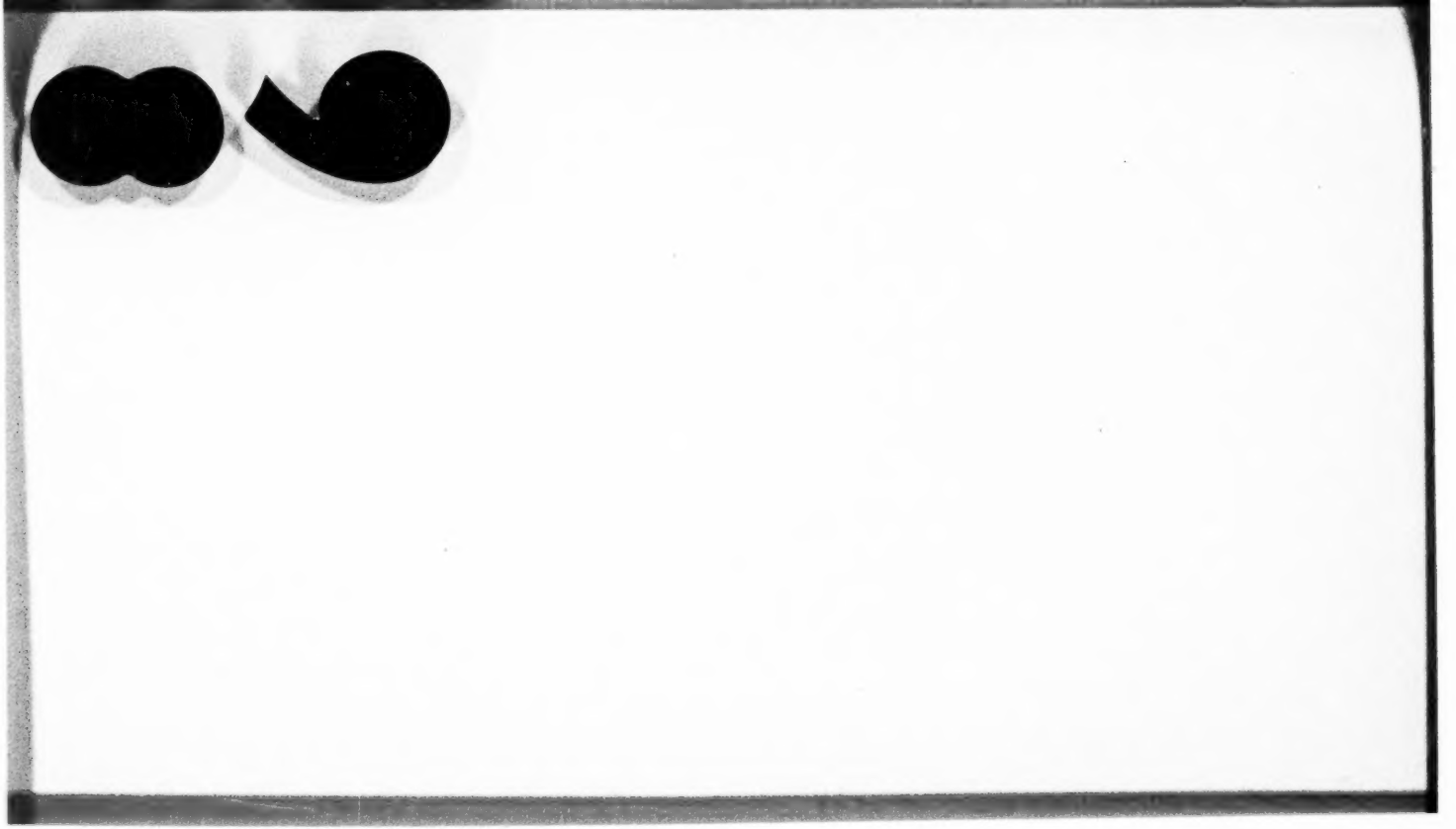
> 'Resolved, That we recognize and proclaim our belief in the free and compulsory education of the children of our nation in public primary schools supported by public taxation, upon which all children shall attend and be instructed in the English language only without regard to race or creed as the only sure foundation for the perpetuation and preservation of our free institutions, guaranteed by the constitution of the United States, and we pledge the efforts of the membership of the order to promote by all lawful means the organization, extension and development to the highest degree of such schools, and to oppose the efforts of any and all who seek to limit, curtail, hinder or destroy the public school system of our land.'

The above resolution was adopted by the Supreme Council, A. & A. S. Rite, for the Southern Jurisdiction of the United States, May, 1920.

Grand Lodge of Oregon, A. F. & A. M., June, 1920.

Imperial Council, A. A. O. Nobles Mystic Shrine, June, 1920."

E N S



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Supreme Court of the United States

OCTOBER TERM, 1924.

No. 583.

WALTER M. PIERCE, as Governor of the State of Oregon; ISAAC H. VAN WINKLE, as Attorney-General of the State of Oregon, and STANLEY MYERS, as District Attorney, for Multnomah County, State of Oregon,

Appellants,

vs.

THE SOCIETY OF THE SISTERS OF THE HOLY NAMES OF JESUS AND MARY,

Appellee.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON UNDER SECTION 266 OF THE JUDICIAL CODE.

BRIEF ON BEHALF OF APPELLEE.

WILLIAM D. GUTHRIE,
BERNARD HERSHKOPF,
Of counsel for Appellee.

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Supreme Court of the United States

OCTOBER TERM, 1924.

No. 583.

WALTER M. PIERCE, as Governor of the State of Oregon, ISAAC H. VAN WINKLE, as Attorney General of the State of Oregon, and STANLEY MYERS, as District Attorney for Multnomah County, State of Oregon,

Appellants,

vs.

THE SOCIETY OF THE SISTERS OF THE HOLY NAMES OF JESUS AND MARY,

Appellee.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON UNDER SECTION 266 OF THE JUDICIAL CODE.

BRIEF ON BEHALF OF THE APPELLEE.

The above entitled cause comes before the court upon the appeal of the Governor, the Attorney General and the District Attorney, the law-enforcing officers of the State of Oregon and of Multnomah County therein, from an order of the United States District Court for the District of Oregon awarding the plaintiff an interlocutory injunction against the enforcement of the so-called Oregon Compulsory Education Law enacted by the voters of the

state under an Initiative Petition, November 7, 1922, upon the ground that its provisions were in conflict with the Constitution of the United States, and hence void (record, p. 30*). The case was heard at Portland, Oregon, by the statutory court constituted under the provisions of section 266 of The Judicial Code (36 Stat. 1162) composed of United States Circuit Judge Gilbert and District Judges Wolverton and Bean, and was decided on March 31, 1924, in favor of the plaintiff below, appellee in this court. The unanimous opinion of the court below, delivered by District Judge Wolverton, is printed at p. 20 of the record and will be found reported in 296 Fed. 928.

The enactment in question is printed in full in appendix I to this brief, which has been printed separately for convenience of reference. Briefly summarized, this enactment requires every child between the ages of eight and sixteen, with inconsequential exceptions, to attend the public schools. It is not a compulsory education law in the ordinary sense; such a law has long been in force in Oregon and the validity of compulsory school laws was not and is not challenged in the case at bar. The statute is, in intent and effect, an act to abolish private and parochial schools which give elementary or primary education to children by compelling parents to send their children to the public school. The act proscribes private and parochial schools by denouncing as guilty of a misdemeanor all parents, guardians and custodians who fail to send their children to a public school and by punishing

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* The page references are to the record unless otherwise indicated.

violation of this requirement with fine and imprisonment. "Each day's failure to send such a child to a public school", the enactment declares, "shall constitute a separate offense". The existence of such an enactment, containing penalties plainly intended to operate *in terrorem*, coupled with the actual threat of the defendants to enforce it as a valid law in September, 1926, when the statute declares it shall become effective, has already caused the plaintiff, which owns and conducts private and parochial schools and maintains an orphanage in the State of Oregon, to lose custom and suffer depreciation in the value of its property and in the good-will which it has built up by over forty-four years of service. Since the enactment practically decreed the extinction of private schools in Oregon even before 1926, and immediate and irreparable damage was resulting therefrom, the plaintiff Society filed its bill of complaint for the injunctive relief which the court below granted, and the defendants have now appealed to this court from the order granting a preliminary injunction (p. 19).

Statement.

There was no dispute as to the facts duly alleged in the bill of complaint. The defendants presented no proofs of any kind and controverted none of the plaintiff's allegations.

The plaintiff-appellee, the Society of the Sisters of the Holy Names of Jesus and Mary, was incorporated in Oregon on November 11, 1880 (pp. 2, 14-6). It was granted corporate power to educate the young, conduct schools and care for orphans (p. 15), and its income was

to come from that source (pp. 3, 15). For more than forty-four years its property and efforts have been devoted to education, both secular and religious, and to the care of orphan children (pp. 3, 5). It has developed into a large, worthy and profitable institution with a most valuable good-will among Catholic parents and guardians and others having the custody of children (pp. 3-6).

The Society conducts primary or grade schools attended by 1,980 children between the ages of eight and sixteen (p. 3). It also conducts high schools and junior colleges (pp. 3-5). In the ordinary course of events, many of the children educated in its primary or grade schools graduate into its high schools and thence in time into its junior colleges (p. 5). The primary or grade schools are not only the most profitable part of the appellee's educational system, but the very heart of its existence, its work and its service (p. 5). Without them the appellee would have practically no source of supply for its high schools and junior colleges (*id.*). Parents and guardians entering their children in the first primary grade, do so with the expectation on their part and that of the school that the children will progress from class to class without the dislocating effect involved in a transfer to other and different schools. The courses of study, both temporal and religious, likewise contemplate this continuity of educational training and discipline under the appellee's charge (p. 10).

The primary or grade schools conducted by the Society for children between eight and sixteen years of age are of the same character, so far as ordinary educa-

tion is concerned, as the corresponding public schools in Oregon (pp. 4-5). The same subjects are taught therein, the same standards maintained, and the same pedagogic methods employed (*id.*). Over all these features the state exercises, and long has exercised, some supervision and control; and there is not a scintilla of proof and no suggestion was made in the court below to warrant any contention or pretense that either this appellee, or any other private or parochial school in the state, has ever been found by the state to be deficient or delinquent in any respect whatever or to have taught objectionable or prejudicial subjects or unpatriotic doctrines.

In addition to education in the common branches, the appellee provides systematic religious instruction and moral training in accordance with the doctrines and moral teachings of the Roman Catholic Church (p. 5). It is alleged in the bill and was not controverted below that (p. 5)—

> "It is the conscientious belief and conviction of parents and guardians in the State of Oregon who are patrons of the plaintiff's said schools, that such religious instruction and moral training are essential to the moral and spiritual welfare of their children and wards, and to a proper preparation for the duties and responsibilities of life and good citizenship, and are most essential for such children and wards when they are between the ages of eight and sixteen years, and while they are in the eight primary grades. By reason of such belief and conviction plaintiff has acquired an assured and increasing patronage for its said grade schools and other schools."

The following table* will show the educational importance which the appellee has attained, undoubtedly be-

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* Derived from pp. 3-4 of the bill of complaint.

cause of its many years of efficient and satisfactory service as an educational, moral and religious force in Oregon:

Schools	*No. of children between 8 and 16 in primary grades*	*Value of buildings*	*Part used by grade school*	*Value of equipment used by grade school*
1. St. Mary's Academy at Portland.....	130	$100,000	One-third	$15,000
2. St. Francis School at Portland.....	150	20,000	All	5,000
3. St. Mary's Academy at Medford.....	115	75,000	One-half	4,000
4. Sacred Heart Academy at Salem.....	170	50,000	One-half	5,000
5. St. Mary's Academy at The Dalles.....	200	50,000	One-half	5,000
6. The Orphanage in Clackamas County	100	300,000	All used for grade school for orphans	3,000
7. Parochial grade school at Eugene 8. Five parochial grade schools in Portland	1,115	Not owned by appellee	All	
Total 12	1,980	$595,000		$37,000

The annual income derived by the appellee from its primary or grade schools has heretofore been in excess of $30,000 (pp. 5-6).

It must be manifest that the appellee Society has a most valuable business. Moreover, it should be borne in

mind that its buildings, worth nearly $600,000, are constructed and appointed so as to have small value for anything but school purposes, that the cost of altering and remodeling them for any other use would be prohibitive (p. 6), and that the equipment in the primary or grade schools, worth nearly $40,000, would be a total loss if the primary schools were to be discontinued (*id.*).

The latest report of the State Superintendent of Public Instruction (1924) shows that 175,510 children were attending the public schools of the state and only ~~5,904~~ 1,2, were then attending private schools. The Superintendent's census report, in 1920, showed that 148,412 children were then attending public schools and 8,477 children attending private schools, and that of these 156,889 children, between the ages of 5 and 20 years, only 3,170 were foreign-born and 30,800 native-born of foreign or partly foreign parentage. Thus, if we assumed *arguendo* that all foreign-born children were attending the private or parochial schools of the state in 1920, when the latest census was taken—which would be quite an extravagant assumption—the foreign-born children would only represent 2 per cent. of the children attending school in that state.

On November 7, 1922, the voters of the State of Oregon, acting under the initiative provisions of the state constitution and laws, adopted the enactment challenged in the case at bar, which in part provides that—

> "Any parent, guardian or other person in the State of Oregon, having control or charge or custody of a child under the age of sixteen years and of the age of eight years or over at the commencement of a term of public school of the district in

> which said child resides, who shall fail or neglect or refuse to send such child to a public school for the period of time a public school shall be held during the current year in said district, shall be guilty of a misdemeanor and each day's failure to send such child to a public school shall constitute a separate offense."

The punishment prescribed was fine, or imprisonment, or both. The only exceptions made in the act were as to (a) abnormal, subnormal, or physically unfit children, (b) children who had completed the eighth grade, that is, primary school education, (c) children residing at specified and comparatively considerable distances from a public school, and (d) children being taught by parents or private tutors. In the last mentioned case, however, the parent or private tutor must obtain a certificate from the county superintendent of education and the child must be periodically examined, etc.

The exceptions are, consequently, of no practical importance. In substance and effect, the law requires every child between eight and sixteen years of age to be sent to a public school. It is, therefore, in necessary and intended effect, an absolute prohibition of private and parochial schools such as the appellee Society conducts and such as normal children between the ages in question have been permitted to attend from the very beginning of our Governments, and even long prior thereto. The validity of this statute must, of course, be judged by its natural and reasonable effect, whatever pretenses may be ventured. *Hammer* v. *Dagenhart*, 247 U. S. 251, 275. "The direct and necessary result of a statute must be taken into consideration when deciding as to its

validity, even if that result is not in so many words either enacted or distinctly provided for. In whatever language a statute may be framed, its purpose must be determined by its natural and reasonable effect." *Collins* v. *New Hampshire*, 171 U. S. 30, 33-4. See also *Child Labor Tax Case*, 259 U. S. 20, 37.

This is peculiarly and essentially true of the enactment now before the court. It is wholly prohibitory, and it does not even purport to regulate private or parochial schools. Indeed, the laws of Oregon already provided and still provide (see appendix I) for regulation, inspection and supervision by the state of these private or parochial schools and for adequate instruction in patriotism and civic duties. No matter how excellent and worthy the proscribed schools may be, this statute, nevertheless, practically decrees their suppression. The right of the parent to choose for his child a private or parochial school which will educate such child in the light of his own religion, or secure for the child special training in particular studies, or develop a particular aptitude, or cure a particular deficiency; the right of the child to influence its parents to the choice of a school which it instinctively prefers or desires; the right of the schools and their teachers to carry on a legitimate and lawful calling and to practise a time-honored, beneficent and noble profession,—all these vital and fundamental rights are invaded and menaced with practical destruction by this enactment.

The enactment further declares that it "shall take effect and be and remain in force from and after the

first day of September, 1926." The purpose of this provision was apparently two-fold: (1) it was intended to afford the state an opportunity to erect the new schools, engage the additional teachers and staff and provide the additional equipment which would be needed, if the many thousand children in the private and parochial schools of the state were to be taken into the public school system; and, on the other hand, (2) to enable the private and parochial schools to wind up their business and liquidate their property and affairs before the act and its destructive provisions became effective. Manifestly, in both aspects, the enactment, even though not directly operative until 1926, commenced at once to exercise its plainly foreseen, intended and natural influence and effect. Its contemplated consequences immediately became operative. To the state, the statute was a mandate forthwith to enter upon its preparations: that is to say, to tax, to spend, to contract, to build, to engage or train additional teachers. To the schools affected, the statute was a peremptory direction to make themselves ready for their doom, to reduce the number of their pupils, to send them to other schools, to discharge teachers, to dispose of property and supplies, to cancel contracts and to forbear from making others. To the parents and guardians, the statute declared that private and parochial schools were anathema to the state and their days numbered, that patriotism and civic duty made it fit and proper to withdraw children therefrom at once, and that prudence required their transfer without delay to other schools where they would find a permanent and continuous, and not a precarious and ultimately doomed, system of education.

The precise situation forecast in the preceding paragraph has, in fact, come to pass in Oregon. This is indisputable. The defendants as law-enforcing officers have publicly announced their conviction that the enactment in suit is valid and wise legislation, and they have declared their intention to enforce it to the full (pp. 9-13). That fact and the considerations above noted have led parents and guardians to withdraw their children from the appellee's schools; and it is daily losing pupils whom it would not lose, were it not for the existence and menace or coercion of this statute and the attitude of the defendants (*id.*). The appellee's income, its good-will and the value of its business and property are, therefore, steadily declining (p. 11). Again, the due conduct of the appellee's business demands that its contracts with teachers and parents and for supplies should be made long beforehand (pp. 11-2). But this enactment rendered it unsafe for the appellee to enter into any such engagements (p. 12). The appellee must also borrow money from time to time for its business purposes (*id.*). The enactment has, however, so depreciated the value of its assets and beclouded its prospects and credit that money lenders will not make it the requisite advances (*id.*).

Reference to appendix II to this brief will show that all the states have compulsory school laws and that all such laws, except the enactment in Oregon in 1922, provide that attendance at a school other than a public school shall under prescribed conditions be compliance with the law. There are many parochial schools in the United States maintained alike by Catholics and Protestants and

some maintained by Jews. The statutes of 24 states expressly provide that attendance at a parochial school shall constitute a proper substitute for attendance at a public school, viz.: Alabama, Arizona, Arkansas, Colorado, Idaho, Iowa, Kansas, Kentucky, Michigan, Mississippi, Missouri, Montana, Nebraska, New York, North Dakota, Ohio, Oregon (section 5259 of the Oregon Laws as now in force), South Carolina, Tennessee, Texas, Virginia, West Virginia, Wisconsin and Wyoming. The school statutes of the remaining states impliedly approve parochial schools under the designation of private school, denominational school, or other term. In this way freedom of education in private or parochial or other religious schools is now and has been recognized by all the states in the Union.

In addition, as appendix II further shows, the education laws of the various states provide for varying degrees of regulation and control by the state of private schools, their several curricula and teachers. Provision has, for example, been made that representatives of the state shall inspect private schools, that their standing under the compulsory school laws and otherwise shall depend upon approval by the state authorities, that general standards laid down by the state authorities shall control the curriculum of the private school, that certain subjects inculcating patriotism shall be taught, such as courses relating to the Constitution, civic duties, etc., that elementary courses shall be conducted in English, that the flag shall be displayed about the school-house, that teachers in private schools shall obtain certificates from the state and be required to be citizens of the United

States or to take the oath of allegiance, that private schools shall furnish reports and statistical data to the state authorities in connection with the compulsory school laws and otherwise, that private schools shall be subject to state regulation as to medical, health and sanitary matters, and that no doctrine subversive of the authority of the state shall be taught in private schools. In New York, *e. g.*, no license can be granted to a private school teaching "the doctrine that organized governments shall be overthrown by force," etc. (Laws 1921, ch. 667.) These statutory provisions show how far the control of the state over private education may reasonably extend and how unnecessary it is to suppress all private and parochial schools in order to insure unobjectionable methods of teaching and courses of study, or the inculcation of patriotism in the minds of American children. In appendix I will be found the laws of Oregon in these respects.

PRELIMINARY REVIEW.

The appellee above named, The Society of the Sisters of the Holy Names of Jesus and Mary, is a branch of a large Catholic teaching order of women who dedicate their lives to the education of children. The Society was founded in 1844 in the Province of Quebec, Canada; and in October, 1859, at the request of Bishop Blanchet, famous for his missionary and educational work in the Northwest and among the Indians, twelve of these Sisters came to Portland, Oregon, after a journey by way of the Isthmus of Panama. These Sisters at once estab-

lished St. Mary's Academy in Portland, which has attained high national repute as an educational institution. They were followed in 1863 by twelve additional Sisters, and an academy and school were then established at Salem, the capital of the state, and other schools were soon afterwards opened in other places throughout the state. The legislature of the State of Oregon chartered St. Mary's Academy in 1866, and the Sisterhood was duly incorporated in 1880 (record, pp. 2, 14-16), as above stated. The Society as so incorporated has ever since and for more than forty-four years been duly conducting academies and schools in the State of Oregon for the education of youth. There are now 1284 of these Sisters throughout the United States consecrating themselves to the holy task of teaching children, with 49 schools and 10,461 pupils.

Catholic education in the State of Oregon steadily developed, and other teaching sisterhoods were from time to time established there. In 1907 the Catholic school system received recognition from the legislature of the state (Laws 1907, ch. 129; appendix I), and in 1910 the school laws were amended so as to give a representative of the Catholic Educational Association of Oregon a place on the State Board of Standardization (Laws 1911, ch. 58, sec. 12; Oregon Laws, sec. 4950; appendix I). These statutory provisions are still in force and effect. Moreover, since 1889, when the first compulsory education law was enacted in Oregon, the laws of the state have recognized education in parochial or other private schools as the equivalent of, and an acceptable substitution for, public school attendance (appendix I).

At the present time, the Society maintains in the State of Oregon sixteen elementary schools, eight secondary or preparatory schools and one college, making a total of twenty-five educational institutions, having 96 teaching Sisters and instructing 2,636 pupils. In 1922, the Catholic elementary schools in Oregon, including those of this appellee, numbered 58, with 8,019 pupils, and the Catholic secondary schools 23 with 1,231 pupils, making a total of 9,250 pupils, mostly between the ages of eight and sixteen, with 339 teaching Sisters.

The history of the service rendered to education on this continent by Catholic religious teaching orders, both men and women, following in the footsteps of heroic missionaries, is most inspiring. It begins early in the XVIth century, and continues in an unbroken and constantly increasing line of noble service and beneficent fruits until our own time. This history will be found in many historical works by those desirous of knowing the truth and appreciating the debt which the supremely important subject of education owes to holy men and women who have labored so long and so self-effacingly in this great humanitarian field. Accurate accounts will be found in Burns' "Principles, Origin and Establishment of the Catholic School System in the United States"; in Burns' "Growth and Development of the Catholic School System in the United States"; in "The Catholic Encyclopaedia", under the title "Schools"; and in the library and records of the Division of Statistics, United States Bureau of Education. The necessary limits of a legal brief prevent any full discussion of this most interesting subject.

An illustrative and typical instance of devotion to the noble cause of education will be found in the services rendered by the famous Catholic teaching order of the Ursuline Sisters, who first came to Louisiana in 1727, two centuries ago. They forthwith established a school at New Orleans, and were encouraged in their educational work by the French Government, to which Louisiana then belonged. When the Spanish Government assumed control in 1769, it continued the policy of encouraging education by Catholic teaching orders. But in 1804, Spain having meantime restored Louisiana to France and Napoleon having at once ceded the territory to the United States, the Catholic teaching orders established in Louisiana became apprehensive of threatened confiscation and of hostile or oppressive laws, and they appealed to President Jefferson for protection. Few incidents in the history of education on this continent are more interesting and illuminating. James Madison was then Secretary of State. Under date of July 20, 1804, he wrote to the Superior of the Order of the Ursuline Sisters in New Orleans as follows:

> "I have had the honour to lay before the President your letter of the 14th of December, who views with pleasure the public benefit resulting from the benevolent endeavors of the respectable persons in whose behalf it is written. Be assured that no opportunity will be neglected of manifesting the real interest he takes in promoting the means of affording to the youth of this new portion of the American dominion, a pious and useful education, and of evincing the grateful sentiments due to those of all religious persuasions who so laudably devote themselves in its diffusion. It was under the influence of such feelings that Gov-

> ernor Claiborne had already assured the ladies of this monastery of the entire protection which will be afforded them, after the recent change of Government."

And a month later, on August 22, President Jefferson himself wrote the following letter:

> "I have received, Holy Sisters, the letters you have written to me, wherein you express anxiety for the property vested in your institution by the former Government of Louisiana. The principles of the Government and Constitution of the United States are a sure guaranty to you that it will be preserved to you sacred and inviolate, and that your institution will be permitted to govern itself according to its own voluntary rules, without interference from the civil authority. Whatever diversity of shade may appear in the religious opinions of our fellow-citizens, the charitable objects of your institution cannot be indifferent to any, and its furtherance of the wholesome purposes of society by training up its young members in the way they should go, cannot fail to insure it the patronage of the Government it is under. Be assured it will meet with all the protection my office can give it."

See Fay, History of Education in Louisiana, p. 129; Burns, Principles, Origin and Establishment of the Catholic School System in the United States, p. 83. The teaching orders of the Ursuline Nuns and Ursuline Sisters now number 1,533 in the United States, with 104 schools and 16,427 pupils.

Perhaps nothing could more eloquently show the spirit of tolerance animating the Founders of our National Government and their appreciation of and respect for religion than the above letters. Indeed, even before

the Constitution, the famous Northwest Ordinance of 1787 had proclaimed the spirit and sentiment then prevailing in regard to both education and religion in the following words (appendix I):

> "For extending the fundamental principles of civil and religious liberty, which form the basis whereon these republics, their laws, and Constitutions are erected; . . . It is hereby ordained and declared . . . that the following articles shall be considered as articles of compact between the original states and the people, and states, in the said territory. . . .
>
> "Article I. No person demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship.
>
> "Article III. Religion, morality and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged. . . ."

Nine years later Washington in his immortal Farewell Address declared (Writings of George Washington, vol. 13, p. 307):

> "Of all the dispositions and habits, which lead to political prosperity, religion and morality are indispensable supports. In vain would that man claim the tribute of patriotism, who should labor to subvert these great pillars of human happiness, these firmest props of the duties of men and citizens. . . . And let us with caution indulge the supposition that morality can be maintained without religion. Whatever may be conceded to the influence of refined education on minds of peculiar structure, reason and experience both forbid us to expect, that national morality can prevail in exclusion of religious principle."

And after the lapse of more than a century and a quarter since Washington's day, his present successor in

the great office of President of the United States has declared with lofty and elevated eloquence—

> "It (the American political system) . . . had its beginning, it found its inspiration, in the religious beliefs of the men who settled our country, made it an independent nation, and established and maintained its Constitution and its laws. If it is to endure, it will be through the support of men of like mind and like character. . . .
>
> "It is altogether natural that those who are connected with religious institutions should be interested in supporting good government. Their interest comes not merely from the ethical teachings of their faith . . . but it comes from a realization that . . . religion has laid the foundation of government. This is preeminently true of our American political system" (Calvin Coolidge, His Ideals of Citizenship, by Edward Elwell Whiting, pp. 268, 283).

Nowhere probably is there a stronger statement of this view than in the leading case of *Holy Trinity Church* v. *United States* (decided in 1892), 143 U. S. 457, 465, 468, 470, where Mr. Justice Brewer, speaking for the unanimous court, among other things proclaimed the historical truth that we are "a religious people":

> "This is historically true. From the discovery of this continent to the present hour, there is a single voice making this affirmation. . . .
>
> "If we examine the constitutions of the various States we find in them a constant recognition of religious obligations. Every constitution of every one of the forty-four States contains language which either directly or by clear implication recognizes a profound reverence for religion and an assumption that its influence in all human affairs is essential to the well being of the community. . . .

> "There is no dissonance in these declarations. There is a universal language pervading them all, having one meaning; they affirm and reaffirm that this is a religious nation. These are not individual sayings, declarations of private persons: they are organic utterances; they speak the voice of the entire people."

Before entering upon any discussion of the merits, or of the points of constitutional law to be passed upon by this court, it may be of aid if we attempt at the outset to eliminate certain questions of public policy and governmental power of the states in the matter of the education of children which are not involved in the controversy now before the court, and thereby narrow the issue. Thus, there is no challenge whatever by the appellee—

1. As to the power of a state to enact compulsory education laws providing generally that all children shall attend some school, and correlatively as to its obligation and duty, upon making such attendance compulsory, to provide free tuition.

2. Nor as to the power of a state to require under just and equal regulations that teachers shall be competent, of good moral character and patriotic, and that they shall be licensed by state or local authority.

3. Nor as to the power of a state within reasonable and just limits to prescribe particular studies for children, or to prohibit such studies as would be reasonably calculated to be prejudicial to them or prejudicially to affect their morals, religion, or patriotism, but not to prohibit other and proper studies.

It should likewise be emphasized at the outset of the discussion that there was no suggestion below in plead-

ing, brief, or argument that the teachers, men or women, employed by this appellee or in the Catholic parochial or the other private schools of the State of Oregon were not trained and competent scholars, of good moral character and eminently qualified to teach children; nor that there was any ground for doubting their patriotism and loyalty to our national and state governments; nor that the curriculum of these schools or the result obtained therein was in any way unsatisfactory to the state educational authorities, or unequal in educational value or result to that obtained in the public schools; nor that anything taught or inculcated in these schools was inimical to the state, or in any way or sense whatever prejudicial to the morals, patriotism, or welfare of children.

In appendix I to this brief, is the official argument submitted to the people of the state at the election on November 7, 1922, the result of which was that the measure was carried by a vote of 115,506 to 103,685; but in such argument no mention was made of any investigation by any competent or experienced experts, or of any facts tending in the remotest degree to show any necessity whatever for so drastic a measure as the practical suppression of all the private and parochial elementary schools of the state which had for more than sixty years theretofore been not only permitted to teach children but encouraged in that public service.

But in truth, unless court and counsel are to be blind to what "all others can see and understand" * and

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* *Child Labor Tax Case*, 259 U. S. 20, at p. 37: "How can we properly shut our minds to it?"

what was clearly present in every aspect and phase of this litigation, though direct mention thereof has been studiously avoided, the sole offense of the members of this appellee, The Society of the Sisters of the Holy Names of Jesus and Mary, was that in connection with their schools they were teaching the children and orphans confided to their care the sacred truths and doctrines of religion according to the tenets of the Roman Catholic Church.

Inexcusable and cruel, indeed, is the libel contained in the oblique innuendoes we find in the brief on behalf of the appellant, Governor of Oregon, and particularly the charge at page 62 thereof that injurious effects may result "from the standpoint of American patriotism" if American parents are allowed to guide and determine the character of the education of their own children, and that they may be taught in religious schools disloyal and subversive doctrine and "that the claims upon them of the religion to which they belong are superior to the claims of the United States," etc. The Catholics now appeal from this libel to fair-play and justice and to the judgment of all candid, impartial and tolerant American citizens.

In all Catholic schools, patriotism, obedience to the law and loyalty to the Constitution are taught, not merely as a patriotic duty, but a religious duty as well, and the best and highest ideals of American patriotism and citizenship are exalted. Children are taught in these schools that loyal obedience to the laws and religious tolerance are the two essential elements of good citizenship, and in every way they are impressed with the obli-

gation as a religious duty to render unto Caesar the things which are Caesar's and unto God the things which are God's, and to be ever grateful that in this country these two separate duties are wholly reconcilable.

The fundamental and controlling motive for the establishment and maintenance of Catholic parochial or elementary schools is the profound conviction on the part of Catholics, in which conviction clergy and laity are a unit, that the welfare of the Nation, the stability of our constitutional system of government, the continuance of civil and religious freedom, and the lasting happiness of the individual citizen depend upon the code and standards of morality, discipline, self-control and temperance taught by religion. And this broad-minded view is not confined to Catholics, but is shared by Protestants and Jews throughout our country. The student of history well knows that social order and civilized society have always rested upon religion, that there has never been a civilized nation without religion, that free government has never long endured except in countries where some religious faith has prevailed, and that our own country for three centuries has been an essentially religious country, by which is meant that the majority of citizens have been believers in God and in some religion. When the Constitution of the United States was established, the Americans were a religious people, and as a whole held firmly to one form or another of Christian faith. As was pointed out by Archbishop Ireland in the Cathedral of St. Paul, in those early days, "to stay away from religious service on Sunday was to invoke upon one's self serious public criticism regardless of religious affilia-

tion." It is quite true that the great majority of Americans were then Protestants, but they constituted an essentially religious majority. The Catholics never forget that they owe the blessing of the religious liberty which they now enjoy and which the National Constitution guarantees to a generation that was overwhelmingly Protestant.

Lord Bryce in his great work on "The American Commonwealth"* reviewed the influence of religion in this country, and declared that "one is startled by the thought of what might befall this huge yet delicate fabric of laws and commerce and social institutions were the foundation it has rested upon to crumble away." That foundation he recognized to be religion, and he admonished us that "the more democratic republics become, and the more the masses grow conscious of their own power, the more do they need to live, not only by patriotism, but by reverence and self-control, and the more essential to their well-being are those sources whence reverence and self-control flow." The greatest source of reverence and self-control is to be found in religion, and if we sow in irreligion we shall reap in misery and lawlessness. Hence, the hope and prayer of the Catholic clergy and laity and millions of Protestants and Jews in America that thorough and efficient religious instruction, so far as lies in their power, shall be an essential element in the education of every American child.

The attitude of Catholic parents in regard to their constitutional rights and liberties as American citizens is not at all peculiar or confined to them. Thousands of Protestant and Jewish parents are sending their children

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* Vol. 2, pp. 793-4, ed. 1914.

to church schools and other private schools, and these parents disapprove and condemn the principle and spirit of the Oregon Compulsory Public School Law just as emphatically as Catholic parents do. There are, for example, many Episcopal church schools, such as Groton, St. Paul's, St. Mark's, etc. The many thousands of Protestant and Jewish parents who now send their children to private church schools where religious instruction is given in the Protestant and Jewish faith respectively resent and protest against the principle of the Oregon Law just as conscientiously and ardently as Catholic parents do, for they readily realize that whilst the Oregon School Law may have been directly aimed at Catholic parochial schools, the precedent is likewise a menace to all other private schools throughout the United States.

LAW POINTS.

I.

SUIT FOR EQUITABLE RELIEF NOT PREMATURELY BROUGHT.

It is confidently submitted that the bill of complaint establishes a case of irreparable injury to the appellee's business and property, and that this injury was already upon it and was steadily growing when suit was brought. *International News Service* v. *Associated Press*, 248 U. S. 215, 236; *Springhead Spinning Co.* v. *Riley*, L. R. 6 Eq. 551, 558. To deny the appellee equitable relief until 1926 would patently be to postpone the remedy until its elementary schools had been practically destroyed, and when it would be too late to undo the damage wrought. "It is one of the most valuable features of equity jurisdiction to anticipate and prevent a threatened injury, where the damages would be insufficient or irreparable. The exercise of such jurisdiction is for the benefit of both parties; in disclosing to the defendant that he is proceeding without warrant of law, and in protecting the complainant from injuries which, if inflicted, would be wholly destructive of his rights." *Vicksburg Waterworks Co.* v. *Vicksburg*, 185 U. S. 65, 82. Particularly should that be true where, as here, the defendants are not possessed of means sufficient to answer to the appellee for the injuries done (p. 14).

The defendant officers, the appellants in this court, have, in fact, themselves adopted and acted upon the foregoing views in the case at bar. Heretofore they pre-

sented a motion to this court to advance the cause for early hearing. In urging upon this court the necessity for an early argument of the case at bar, the following were submitted as the principal grounds of their motion (pp. 4-5):

> "That if said statute shall be held by this court to be valid the effect thereof will be to increase the attendance at certain of the grade schools of the State of Oregon, and to require arrangements to be made for additional facilities for the housing and instruction of children who will attend the said schools.
>
> "That the furnishing of said additional facilities will require the expenditure of money for additional construction and equipment and the employment of additional teachers, prior to the first day of September, 1926.
>
> "That in the ordinary course of events a decision of this court in the said cause will not be rendered in time to permit of arrangements for such increased facilities being made after said decision and by the time same will be required, should the said statute be held valid, but that if the said cause may be heard and determined at this term all parties concerned will have notice of said decision in time to make necessary arrangements required thereby prior to said September 1, 1926, or to avoid unnecessary expenditures for said additional facilities should the decision of this court be that said statute is invalid.
>
> "That by reason of uncertainty as to the validity of the said statute, all persons, corporations, associations and others engaged in providing educational facilities, other than public schools, for said children are at a loss to know what preparations to make with reference to the future conduct of said institutions, and that the advancement of the hearing of said cause as herein requested will operate to their material advantage.

> "That the effect of the present uncertainty regarding the validity of said statute is to cause parents, guardians and others having in charge the education of children who are, or will be, affected by the provisions of said statute, to transfer many of such children from private and parochial institutions to the public schools, to the material disadvantage and financial injury of the persons, corporations, etc., owning and conducting such private and parochial institutions and contrary to the wishes of the parents, guardians, etc., of the said children, if the said statute is invalid."

It is, furthermore, alleged in the bill of complaint and not denied that there are about 9,000 children in the private and parochial schools of Oregon; that it would cost not less than $4,000,000 to provide buildings, equipment and teachers for them, if they are to be taken over by the public school system of the state; that it would require months of preparation by the state prior to September, 1926, in order to provide for such pupils, and that the public funds would be wasted if, after they were expended, the enactment of November 7, 1922, were held unconstitutional and void (pp. 12-13).

Manifestly, therefore, it is in the interest of the state itself that a determination of the questions raised in the case at bar should be had as promptly as may be. Otherwise, it must be clear, irreparable damage is threatened, not alone to the appellee, but to the state as well. And there is no remedy whatever at law for the situation. It follows, consequently, that there should be a remedy in equity. *Terrace* v. *Thompson,* 263 U. S. 197, 214; *Walla Walla* v. *Walla Walla Water Co.,* 172 U. S. 1, 12; *School of Magnetic Healing* v. *McAnnulty,* 187 U. S.

94, 110; *Kennington* v. *Palmer*, 255 U. S. 100, 101, and the cases there cited.

The learned court below wrote as follows upon this point of equity jurisdiction (pp. 24-5; 296 Fed. at pp. 933-5):

> "One of the searching questions involved by the controversy is whether the causes have been prematurely brought. It will be noted that the act complained against is to become effective on and after the 1st day of September, 1926, more than 2 years and 5 months hence. This presents one of the elements which must be considered, along with the rest, for ascertaining and determining whether, under the showing made, the complainants, or either of them, are meeting with irreparable and irremediable injury, which may not be as speedily and adequately met by such remedies as the law side of the court may afford. The principle that the remedy at law, if relied upon to supplant the equitable jurisdiction, must not only be plain, speedy, and adequate, but as adequate, complete, practical, and efficient to meet the ends of justice as that in equity, is so well settled as to need no citation of authority. See, however, *Terrace* v. *Thompson* [263 U. S. 197].
>
> "It is at once obvious that, in the very nature of the upbuilding and maintenance of parochial and private schools, when the attendance, prospective as well as acquired, is taken away or rendered unlawful, it will destroy the pursuit or occupation. If school buildings have been constructed, and equipment purchased and provided, without school attendance such property must lapse into disuse, and become of no value for the purposes for which it was designed, and, of course, an irreparable loss will ensue—the paramount loss of school attendance, and a damage and practical destruction, especially for school purposes, of the school property.

"Now, although the time at which the act is to become effective is somewhat remote, it is quite apparent, from the allegations of the bills, the work of destruction of complainants' occupation has already set in. They are losing their patronage, traceable directly to the fact that the act is a statute duly adopted and promulgated. Parents are looking to the future, and are laying their plans to meet the exigencies to arise. The curriculum of the grade schools requires several years of attendance, and, if parents must, on the taking effect of the statute, send to the public schools, many of them are prepared to do so now, or as convenience may suggest. Hence the drawing away of complainants' patronage has set in, and will continue with increased progression until the day when all will be lost. This is not only the alleged result of the passage of the act, but it is the most natural and consequential thing to expect. The damage, of course, is irreparable, and compensation does not afford adequate relief. The injury being of a quality that is continuous and accelerating, it must be stayed if the ends of justice are to be met.

"Nor is it an answer to the dilemma that the act may be repealed before it becomes operative, or that ample opportunity is afforded for the people or the Legislature to amend it, so as to present a radically different question from that now involved. In all probability its provisions will remain as they now are until they become operative and the damage is done, for it is not usual to amend or repeal statutes, at least until their effect has been tested. The very purpose of placing the effective date so far ahead was to give ample time for the parochial and private schools to adjust themselves to the new conditions, which is really a confession on the part of the law givers that such schools are going to be hurt, and that seriously, if not irreparably. It must be true, as expressed by Mr. Justice Brewer while sitting in the Circuit Court of Nebraska:

" 'That the powers of a court of equity are as vast, and its processes and procedure as elastic, as all the changing emergencies of increasingly complex business relations and the protection of rights can demand'—quoted in *Toledo, A. A. & N. M. Ry. Co.* v. *Pennsylvania Co.* (C. C.) 54 Fed. 746, 751.

"That the writ may be novel, or is without precedent, is not a fatal objection to its use, for the jurisdiction of a court of equity depends—'rather upon the necessities of mankind, and the great principles of natural justice, which are recognized by the courts as a part of the law of the land, and which are applicable alike to all conditions of society, all ages, and all people.' *Dodge* v. *Cole,* 97 Ill. 338, 364.

" 'Courts may amplify remedies and apply rules and general principles for the advancement of substantial justice.' 32 Corpus Juris, p. 34, §13.

"Of course, in the use of the writ of injunction, the court must exercise a sound and legal discretion, regulated by analogy, and by what would be manifestly just, in view of all the existing conditions.

"It cannot be questioned that a party affected by an unconstitutional act need not wait until some step is taken, under the act, that would affect him injuriously. 'One does not have to await the consummation of threatened injury to obtain preventive relief.' *Pennsylvania* v. *West Virginia,* 262 U. S. 553. See, also, *Vicksburg Waterworks Co.* v. *Vicksburg,* 185 U. S. 65. . . .

"The case of *Terrace* v. *Thompson, supra,* is one where, though the act was effective, there was no violation thereof by the parties concerned. Yet a suit to enjoin its enforcement was sustained, on the ground that a violation of the act would subject the offenders to the penalty subjoined. Nor are we without precedent for the application of injunctive relief, even prior to the time when the statute becomes effective. *Palatka Waterworks* v.

City of Palatka (C. C.) 127 Fed. 161. And *Davenport* v. *Kleinschmidt,* 6 Mont. 502, seems to be of like character.

"However, considering that injunctive relief is appropriate to prevent threatened or impending irreparable injury and damage to one's property rights, it can hardly be further urged that it is inapplicable here because the suits were prematurely instituted. The present bills of complaint show, not only a threat to enforce the act when it becomes effective, but that complainants are suffering irremediable injury now, which will continue with increasing detriment and damage until their principal occupations are destroyed and they are deprived of their property and property rights. We think the suits were not prematurely brought."

II.

COURTS OF THE UNITED STATES HAVE JURISDICTION BECAUSE A FEDERAL CONSTITUTIONAL RIGHT OF THE PLAINTIFF-APPELLEE WAS INVADED BY THE ENACTMENT IN QUESTION.

As the court will observe from the portion of the enactment of November 7, 1922, quoted above, its sanctions fall upon the parents and guardians who fail to send their children to the public schools and likewise upon any "other person in the State of Oregon, having control or charge or custody of a child under the age of sixteen years and of the age of eight years or over." It is true that the penalties expressed in the statute do not, in terms at least, run against the private or parochial schools which may receive children between eight and sixteen years of age as pupils in violation of the act.

Whether such schools would not, in such circumstances, be aiders and abettors of the parents and guardians themselves, and thus under settled rules of criminal law equally guilty as principals of the offense and misdemeanor, need not be debated here. The fact that the harm threatened by the enactment is directly incident upon the appellee's schools can readily be established, even upon the assumption indulged by the defendants themselves that the statute does not at all proscribe the appellee's schools as guilty of crime thereunder. Moreover, this appellee comes literally within the law because it maintains an orphanage, and therefore has immediate "control or charge or custody" of 100 orphan children "whose only home is in said institution" (p. 4).

If it be conceded *arguendo* that the threat of the statute is in terms limited to the parent, guardian, or custodian alone, it must still be manifest that its direct and necessary effect is to work irreparable injury to the private and parochial schools of the state. Such schools plainly cannot exist after parents, guardians and custodians are forbidden by law to send children thereto under penalty of criminal prosecution. Without pupils, there can obviously be no schools; and, unless parents and those having children in their custody may lawfully permit children to attend the private or parochial schools, the latter will, of course, have no pupils.

It is, therefore, clearly an untenable contention on the part of these appellants that the enactment challenged does not directly, immediately and necessarily damage the appellee's schools and orphanage, nor invade any of its rights, even if the statute be unconstitutional

so far as parents, guardians or other custodians of children are concerned. The liberty and freedom of the parents and guardians lies at the very basis of the appellee's property rights. If parents and guardians are not free to patronize the appellee's schools, the Society must abandon its beneficent and fruitful work; its valuable business must be destroyed; its good-will must be dissipated, and its right to pursue its noble calling must fail and come to an end. "You take my house, when you do take the prop that doth sustain my house; you take my life, when you do take the means whereby I live." *

Surely, no one would for a moment doubt that a railroad was directly and injuriously affected by a law which attempted to prohibit persons from riding on its lines. No court would for a minute tolerate the preposterous plea that such a statute concerned only the liberty of the individuals prohibited and did not directly or necessarily affect the railroad corporation in any such practical degree as would permit it to contest the constitutional validity of such a statute before a court of justice.

Constitutional rights are not held by so visionary or tenuous a thread. To cut off one's custom at the very root, to wipe out his source of living or supply by an unconstitutional threat to all those with whom he deals, and then to assert that neither his property rights nor his liberty is invaded thereby, "is the very irony of despotism. Apples of Sodom were fruit of joy in comparison." Brewer, J., in *Chicago & N. W. Ry. Co.* v. *Dey*, 35 Fed. 866, 880. The Constitution looks to the substance

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* Merchant of Venice, Act IV, sc. II, l. 375.

of things; and no amount of sophistry can alter the fact that in the case at bar the freedom of the parents, guardians and custodians to send their children to private or parochial schools is, in the strictest and elementary sense, of the very essence of the property rights of the appellee Society. If, therefore, the liberty of parents be unconstitutionally impaired by the enactment in suit, surely it must needs follow, by the same token and with irresistible logic, that the constitutional rights of the appellee are likewise directly and unconstitutionally abridged.

It is, perhaps, quite unnecessary to remark that the foregoing plain dictates of common sense have repeatedly had the approval of this court. *Truax* v. *Raich,* 239 U. S. 33, 38; *Nebraska District of Evangelical Lutheran Synod* v. *McKelvie,* 262 U. S. 404; *Terrace* v. *Thompson,* 263 U. S. 197, 215-6; *Packard* v. *Banton,* 264 U. S. 140, 143. In *Truax* v. *Raich, supra,* a statute of Arizona prohibited employers from having more than twenty per cent of aliens in their employ. The penalty prescribed in the act ran against the employer alone, and the act was not in terms addressed to the alien at all. Raich was an alien in the employ of Truax. The latter was in all respects satisfied with Raich and his work. Nevertheless, he advised Raich that the statute in question and the penalties which it denounced made it necessary for him to discharge Raich. Thereupon Raich applied to a court of the United States for an injunction to restrain the Attorney General of Arizona from enforcing the enactment upon the ground that it was unconsti-

tutional. Precisely as in the case at bar, it was there argued that Raich had no right to complain merely because his employer's rights were invaded by the act, that the statute was not directly applicable to him, and that hence no constitutional question affecting Raich himself was in fact before the court. This court, however, refused to approve any such specious argument, Mr. Justice Hughes saying (239 U. S. at p. 38):

> "It is further urged that the complainant cannot sue save to redress his own grievance (*McCabe* v. *Atchison, Topeka & Santa Fe Ry.*, 235 U. S. 151, 162); that is, that the servant cannot complain for the master, and that it is the master who is subject to prosecution, and not the complainant. But the act undertakes to operate directly upon the employment of aliens and if enforced would compel the employer to discharge a sufficient number of his employes to bring the alien quota within the prescribed limit. It sufficiently appears that the discharge of the complainant will be solely for the purpose of meeting the requirements of the act and avoiding threatened prosecution under its provisions. It is, therefore, idle to call the injury indirect or remote. It is also entirely clear that unless the enforcement of the act is restrained the complainant will have no adequate remedy, and hence we think that the case falls within the class in which, if the unconstitutionality of the act is shown, equitable relief may be had."

In *Nebraska District of Evangelical Lutheran Synod of Missouri* v. *McKelvie*, 262 U. S. 404, 409, the statute forbade teachers to give instruction in a foreign language. The sanction denounced by the statute fell solely upon teachers. As here, it did not purport to address itself to the school. It will be noted that in that case the plaintiff was a corporation conducting a private or parochial school.

The arguments now pressed by the defendants in the case at bar were, consequently, in all respects peculiarly applicable to the plaintiff, the Evangelical Lutheran Synod. With equal force and appropriateness, it could there be urged that, as the plaintiff was a corporation, it could not claim a violation of liberty under the Fourteenth Amendment, on the notion that the liberty protected by the Amendment is that of natural persons exclusively, that the plaintiff corporation could not raise any question affecting the liberty or property rights of its teachers, since they alone could be heard to complain of a violation of their rights, and that as the prohibitions of the statute were not aimed at it, none of its rights was directly transgressed by the law. Hence, it is particularly noteworthy that the situation before the court in the case of the Evangelical Lutheran Synod was precisely the same as that now presented by the appellee Society. Nevertheless, this court then held that the plaintiff corporation was entitled to seek an injunction against the law-enforcing officer of Nebraska; and, as the court in *Meyer* v. *Nebraska*, 262 U. S. 390, had already pronounced the so-called "Foreign Language Act" unconstitutional, it granted the Evangelical Lutheran Synod the injunctive relief it prayed for. 262 U. S. at p. 411.

Terrace v. *Thompson*, 263 U. S. 197, 215, also strikingly illustrates the same rule. The statute of Washington there involved rendered unlawful the holding of agricultural land by aliens. Terrace, who owned such land, desired to lease it to a Japanese subject, one Nakatsuka, but feared to do so because of the existence of

the statute. Thereupon he sued the Attorney General of Washington to enjoin the enforcement of the act as unconstitutional. The jurisdiction of the court was challenged by the defendant. The court, however, overruled that objection, Mr. Justice Butler declaring (at p. 215):

> "If, as claimed, the state act is repugnant to the due process and equal protection clauses of the Fourteenth Amendment, then its enforcement will deprive the owners of their right to lease their land to Nakatsuka, and deprive him of his right to pursue the occupation of farmer, and the threat to enforce it constitutes a continuing unlawful restriction upon and infringement of the rights of appellants, as to which they have no remedy at law which is as practical, efficient or adequate as the remedy in equity. And assuming, as suggested by the Attorney General, that after the making of the lease the validity of the law might be determined in proceedings to declare a forfeiture of the property to the State or in criminal proceedings to punish the owners, it does not follow that they may not appeal to equity for relief. No action at law can be initiated against them until after the consummation of the proposed lease. The threatened enforcement of a law deters them. In order to obtain a remedy at law, the owners, even if they would take the risk of fine, imprisonment and loss of property, must continue to suffer deprivation of their right to dispose of or lease their land to any such alien until one is found who will join them in violating the terms of the enactment and take the risk of forfeiture. Similarly Nakatsuka must continue to be deprived of his right to follow his occupation as farmer until a land owner is found who is willing to make a forbidden transfer of land and take the risk of punishment. *The owners have an interest in the freedom of the alien, and he has an*

> *interest in their freedom, to make the lease. The state act purports to operate directly upon the consummation of the proposed transaction between them, and the threat and purpose of the Attorney General to enforce the punishments and forfeiture prescribed prevent each from dealing with the other. Truax* v. *Raich, supra.* They are not obliged to take the risk of prosecution, fines and imprisonment and loss of property in order to secure an adjudication of their rights. The complaint presents a case in which equitable relief may be had, if the law complained of is shown to be in contravention of the Federal Constitution." (Italics ours.)

For the foregoing reasons, it is submitted that the court below soundly refuted and overruled the defendants' contentions upon this head when it declared as follows (pp. 22-4, 296 Fed. at pp. 931-3):

> "The question as to equitable jurisdiction is a simple one, and it may be affirmed that, without controversy, the jurisdiction of equity to give relief against the violation or infringement of a constitutional right, privilege, or immunity, threatened or active, to the detriment or injury of a complainant, is inherent, unless such party has a plain, speedy, and adequate remedy at law; and in the exercise of such jurisdiction, the court may, in proper cases, restrain state officers, clothed with authority for enforcing the laws, from the threatened enforcement of a state law which contravenes the federal Constitution, wherever it is essential in order effectually to protect property rights and the rights of persons against injuries otherwise irremediable. . . .
>
> "Further than this, a party insisting that constitutional guaranties for his benefit are being violated, may also insist, as an element of infringement of such guaranties, that others upon whom he is dependent for the support and sustenance of his

lawful business shall not be deprived of their constitutional rights, privileges, and immunities. . . .

"To make the application here, the complainants in the instant cases have an interest in the parents and guardians of children of school age, and in the protection of their constitutional rights and liberties, and such parents and guardians have an interest in the constitutional rights of complainants to see that their schools may be maintained for the mutual use and benefit of the parties concerned. Thus the field of inquiry is broadened, and pertains, not only to whether the complainants' constitutional rights are affected adversely by the act in controversy, but to whether the constitutional rights of the parents and guardians are also adversely affected, for, if they are so affected, complainants will be deprived, nevertheless, of the advantage of patrons with legal right and privilege of providing school attendance. In other words, the schools will be affected adversely, if the act is unconstitutional, whether it be by reason of an invasion of the patrons' constitutional rights and privileges, or of an invasion of plaintiffs' inherent rights, or both. Indeed, the very pith of complainants' contention is that they cannot maintain their schools, if their patronage is taken away by making it unlawful for parents and guardians to send their children to complainants' schools.

"It can scarcely be contended that complainants' right to carry on their schools, whether parochial or private, is not a property right, and the right of parents and guardians to send their children and wards to such schools as they may desire, if not in conflict with lawful requirements, is a privilege they inherently are entitled to enjoy."

III.

THE ENACTMENT IN SUIT IS NOT A LEGITIMATE EXERCISE OF THE POLICE POWER OF THE STATE.

It is a commonplace under our system of constitutional government and constitutional limitations that neither the individual's right of liberty nor his right of property is absolute. Individuals hold even those essential, fundamental and sacred rights subject to the power of the state to abridge them by just and equal laws in order to promote the public safety, health, morals, or general welfare. But this power is not unlimited, and it must be exercised within reasonable and just limits. If the power be arbitrarily, unnecessarily, unreasonably, ruthlessly, or wantonly exerted, the fundamental rights of the individual may be invaded, and the legislation be unconstitutional and void. To the end that the supreme law of the land may be vindicated, its guaranties enforced and all affected duly protected, the courts are entrusted with authority, and it becomes their solemn duty, to review the reasonableness and propriety of any attempted use of the police power of a state. It follows that this court, in the case at bar, must weigh and consider the character, purpose and effect of the enactment challenged in order to determine whether it is, in fact and truth, a reasonable and legitimate exercise of the powers of government, or merely an arbitrary and unreasonable invasion and attempted destruction of essential, fundamental and sacred private rights without any legitimate justification or any necessity in the public welfare.

The inherent and fundamental character of the inquiry thus committed to the court, as we have already seen, requires the court to look at the outset to the actual and practical effect of an enactment. In the case at bar, therefore, the first duty must be to determine the practical and true effect of the statute under consideration and accordingly to determine its character. As Mr. Chief Justice Taft said for the court in the *Child Labor Tax Case, supra,* 259 U. S. 20, 37:

> "In the light of these features of the act, a court must be blind not to see that the so-called tax is imposed to stop the employment of children within the age limits prescribed. Its prohibitory and regulatory effect and purpose are palpable. All others can see and understand this. How can we properly shut our minds to it?"

Courts, of course, do not close their eyes to what everybody knows. Consequently, this court, like the court below, must know and realize that the true purpose and intent of the act, as well as its plain and intended practical effect, were the destruction of private primary, preparatory and parochial schools, for they certainly could not survive the denial of the right of parents to have their children thus educated in the primary grades. The three judges in the court below, sitting in Oregon and presumably thoroughly familiar with local conditions and motives, declared that (p. 27; 296 Fed. at p. 936)—

> "The act could not be more effective for utterly destroying the business and occupation of complainants' schools, except perhaps the college and higher preparatory grades, if it had been entitled 'An Act to prevent parochial and private schools

> from teaching the grammar grades'. This serves to emphasize the seriousness of the controversy. Indeed, the simile is no stronger than the argument for the adoption of the measure put it: 'A divided school can no more succeed than a divided nation'. That such is the purpose of the act is obvious and incontrovertible."

Such drastic and extraordinary legislation is indisputably a portentous innovation in America. Private and religious schools have existed in this country from the earliest times. Indeed, the public or common school, as we know it to-day, dates only from 1840. For generations all Americans—including those who fought for liberty and independence in the eighteenth century, and who drafted the Declaration of Independence, the Northwest Ordinance of 1787, and the Constitution of the United States—were educated in private or religious schools, and mostly the latter. Perhaps no institution is older or a more intimate part of our colonial and national life than religious schools and colleges, both Catholic and Protestant. The private and religious schools have been the laboratories in which educational methods have been worked out and pedagogic progress accomplished from the very beginning of our history. Out of them have developed, or to them is due, our greatest colleges and universities, the most important of them to this day being private or religious institutions. In more recent times commonwealth colleges and universities have grown up. The legislation before the court manifestly carries within itself a threat, not merely to the private elementary and preparatory schools which it now practically proscribes, but to every private or religious pre-

paratory school and every private or religious college or university in the land. If a "divided school can no more succeed than a divided nation", as the proponents and defenders of the act wrote in defense of the challenged measure when it went before the people of Oregon by initiative petition, and thus invoked the destruction of all private and parochial elementary schools, a "divided" high school or college or university would stand upon no more secure footing, and hence the doom of every private or religious institution of higher education is even now forecast and in process, if this Oregon enactment be within the constitutional powers of a state.

A learned commentator upon the police power has admonished us that—

> "Freedom in the pursuit of art, literature and science is, as matter of history, bound up with the freedom of religion and of speech and press, for it has practically never been opposed for other than religious or political motives" (Freund on Police Power, sec. 479).

The statute in suit is so unusual and extraordinary that it must arouse misgivings in the judicial mind upon even the slightest reflection. More than ever must it be borne in mind in judging it, as pointed out by the Chief Justice in *Wolff Co.* v. *Industrial Court,* 262 U. S. 522, 534, that—

> "While there is no such thing as absolute freedom of contract and it is subject to a variety of restraints, they must not be arbitrary or unreasonable. Freedom is the general rule, and restraint the exception. The legislative authority to abridge can be justified only by exceptional circumstances," citing *Adkins* v. *Children's Hospital,* 261 U. S. 525.

In the present case, the statute abridges the freedom of four classes closely interrelated: (1) the freedom of the private and parochial schools, (2) the freedom of teachers engaged in teaching in the private and parochial schools, (3) the freedom of parents and guardians, and (4) the freedom of children. It will, perhaps, make the true issue clear and distinct if these four categories be separately considered.

1. At the outset, it should be clearly understood that the private and parochial schools of Oregon are not in court complaining of any *regulatory* measure, and that they have no quarrel with any proper compulsory education law.

As much as any one, the private and parochial schools desire every child to have an education and a good one. Indeed, to assure such an education is the very reason for the existence of private and parochial schools. They agree unreservedly that, generally speaking, every child should be compelled to attend *some* school. But they insist that it by no means follows that the public welfare, or the interest of the child, requires attendance at a public school exclusively.

There is nothing in the record which warrants even the suggestion that private and parochial schools in Oregon are in any respect inferior to the public schools. No such claim or pretense was made in the argument which the proponents and sponsors of the act addressed to the voters. No such claim or pretense was made in the court below. If, however, the contrary were the fact, the case would still be no different; for there would still not exist any valid reason for the total suppression of the private and parochial elementary schools. The State of

Oregon has regulatory power adequate to every reasonable and proper need in this relation. Indeed, it has largely exercised it as the statutes in appendix I demonstrate. It has power to inspect, supervise and examine the schools, the teachers and the pupils. It has power to prescribe some standards of study and attendance, to prohibit improper teachings and subjects, and to require proper methods and facilities. In fact, there is no abuse, or possibility of abuse, for which the state has not available some perfectly plain and time-honored mode of regulation entirely appropriate to correction or prevention.

In the brief submitted on behalf of the appellant Governor of the State of Oregon, it is urged in justification for the enactment that it was necessary in order to prevent the teaching of disloyalty and subversive radicalism or bolshevism. We lay to one side the utter absence of any basis in fact for such an argument and the offensiveness of the suggestion, as well as the patent incongruity of employing it in support of an effort to destroy such schools as the Hill Military Academy, the plaintiff and appellee in No. 584, whose school, as the record in that case discloses (pp. 2-3), "offers its students instruction in military science and training under the supervision and control of an officer assigned to said school for that purpose by the War Department of the United States".

Assuming, therefore, but only for the purposes of the argument, that there may be in fact such an evil as this appellant conjures up and that it is not a mere chimera, nevertheless, there is no reasonable necessity for any

such prohibitory law as is now under discussion. This court has emphatically held that the states have power to make criminal and forbid the teaching of disloyalty, sedition, or pacifism. *Gilbert* v. *Minnesota,* 254 U. S. 325. It has also declared "that this court and other courts have decided that a license or certificate may be required of a . . . school teacher." *Lehmann* v. *Board of Accountancy,* 263 U. S. 394, 398. It is now indubitable law that a state may require private schools to be licensed and may refuse such licenses to schools which seek to inculcate doctrines inimical to our form of government. *People* v. *American Socialist Society,* 202 N. Y. App. Div. 640. In these unquestionable rules of law clearly repose all the protection and power which the state reasonably requires. It need license only proper and patriotic private schools; it need issue certificates to those teachers only whom it finds of satisfactory character and fitness from every reasonable point of view, including patriotism and loyalty, and it need not permit any others to teach anywhere; and, in addition, it can enact criminal laws for the punishment of all who disobey any just and equal regulatory measure.

In such a system of regulation, there is no element of total and indiscriminate prohibition—no ruthless sacrifice of the innocent and the guilty alike. It is not reasonably necessary to destroy the private and parochial schools conducted by this appellee, which has scrupulously obeyed the law during the more than forty-four years of its existence, and to deprive it of all opportunity hereafter law-abidingly and patriotically to carry on a noble and beneficent calling. Where regulation is so

completely adequate, prohibition is unnecessary and constitutes mere arbitrariness and wanton abuse of power. Particularly must this be true, where the subject of the alleged prohibition is an ordinary, innocuous and useful calling, trade, or business. However the matter may stand as to nuisances and businesses tainted with vicious qualities, tendencies, or effects, there is no doubt that this court has repeatedly and authoritatively refused to countenance destruction of honest and ordinary businesses charged with abuses which were readily remediable by regulation. *Adams* v. *Tanner,* 244 U. S. 590; *Meyer* v. *Nebraska,* 262 U. S. 390; *Nebraska District of Evangelical Lutheran Synod* v. *McKelvie, id.* 404, 410.

In *Adams* v. *Tanner, supra,* an initiative measure of the State of Washington forbade employment agencies to collect pay from employees for whom they secured situations. It was argued that this was not really a prohibitory law, since its effect was merely to require free service to the workman, and there was no prohibition upon collecting compensation from the employer. This court, however, refused to be misled by any such sophistry. It held that the act, in substance and effect, prohibited the ordinary business of finding employment for individuals in return for pay from them.

It was, however, further insisted by the state in that case that such a prohibition was justifiable, because the business of employment agencies was affected by many serious abuses. How plausible and persuasive that contention was can readily be perceived upon perusal of the dissenting opinion of Mr. Justice Brandeis. Nevertheless, this court concluded that even such a showing was

not sufficient justification for the abolition of this ordinary and legitimate business; and the court held that the abuses might afford warrant for due regulation, but not for utter prohibition. Mr. Justice McReynolds then wrote in part as follows (244 U. S. at pp. 592-5):

> "The bill alleges 'that the employment business consists in securing places for persons desiring to work' and unless permitted to collect fees from those asking assistance to such end the business conducted by appellants cannot succeed and must be abandoned. We think this conclusion is obviously true. As paid agents their duty is to find places for their principals. To act in behalf of those seeking workers is another and different service, although, of course, the same individual may be engaged in both. Appellants' occupation as agent for workers cannot exist unless the latter pay for what they receive. To say it is not prohibited because fees may be collected for something done in behalf of other principals is not good reasoning. The statute is one of prohibition, not regulation. . . .
>
> "We have held employment agencies are subject to police regulation and control. 'The general nature of the business is such that unless regulated many persons may be exposed to misfortunes against which the Legislature can properly protect them,' *Brazee* v. *Michigan*, 241 U. S. 340, 343. But we think it plain that there is nothing inherently immoral or dangerous to public welfare in acting as paid representative of another to find a position in which he can earn an honest living. On the contrary, such service is useful, commendable, and in great demand. . . .
>
> "*Because abuses may, and probably do, grow up in connection with this business, is adequate reason for hedging it about by proper regulations. But this is not enough to justify destruction of one's right to follow a distinctly useful calling in*

> *an upright way.* Certainly there is no profession, possibly no business, which does not offer peculiar opportunities for reprehensible practices; and as to every one of them, no doubt, some can be found quite ready earnestly to maintain that its suppression would be in the public interest. Skillfully directed agitation might also bring about apparent condemnation of any one of them by the public. Happily for all, the fundamental guaranties of the Constitution cannot be freely submerged if and whenever some ostensible justification is advanced and the police power invoked." (Italics ours.)

Meyer v. *Nebraska,* 262 U. S. 390, involved the so-called Foreign Language Law of Nebraska. It prohibited the teaching of a foreign language to children before they had passed through the eighth grade. Meyer had violated this act by teaching German to young children in a parochial school. The act obviously attempted to deprive him of his vocation as a teacher. Many arguments were urged in defense of the statute. Among others, it was argued that the act tended only to regulate the teaching of foreign languages to the young and to postpone that species of education until the child was older and better fitted therefor; that it was calculated to make English the primary and preferential tongue of the children; that it tended to Americanize children of foreign parents; that over 24 per cent. of the men affected by the draft during the late war were found not to know the language of this country; that foreigners and their children lived by themselves in "little Italys, little Germanys and little Polands" and never really became part of this country and its actual citizenship; that such situations were not conducive to patriotism and loyalty, etc.,

etc. That all this had an obvious plausibility, cannot be doubted; indeed, it had theretofore proved conclusive in the state courts.

But this court would have none of it. Quite rightly, it perceived that the means adopted, namely, the prohibition of teaching foreign languages to the young, was not appropriate to any legitimate end. Due regulation could accomplish all that was needful in that relation without the total destruction of an honest calling. The teaching of a foreign tongue was in no sense inherently vicious; nor were those who carried it on as a means of livelihood. Honestly engaged in, there was nothing reprehensible in that species of business or prejudicial to the public welfare. Hence it could not constitutionally be prohibited. Mr. Justice McReynolds, speaking for the court, said in part as follows (262 U. S. at p. 399 *et seq.*):

> "While this court has not attempted to define with exactness the liberty thus guaranteed [*i. e.*, by the Fourteenth Amendment], the term has received much consideration, and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men. *Slaughter-House Cases*, 16 Wall. 36; *Butchers' Union Co.* v. *Crescent City Co.*, 111 U. S. 746; *Yick Wo* v. *Hopkins*, 118 U. S. 356; *Minnesota* v. *Barber*, 136 U. S. 313; *Allgeyer* v. *Louisiana*, 165 U. S. 578; *Lochner* v. *New York*, 198 U. S. 45; *Twining* v. *New Jersey*, 211 U. S. 78; *Chicago, B.*

& Q. Ry. Co. v. *McGuire,* 219 U. S. 549; *Truax* v. *Raich,* 239 U. S. 33; *Adams* v. *Tanner,* 244 U. S. 590; *New York L. Ins. Co.* v. *Dodge,* 246 U. S. 357; *Truax* v. *Corrigan,* 257 U. S. 312; *Adkins* v. *Children's Hospital,* 261 U. S. 525; *Wyeth* v. *Board of Health,* 200 Mass. 474. The established doctrine is that this liberty may not be interfered with, under the guise of protecting the public interest, by legislative action which is arbitrary or without reasonable relation to some purpose within the competency of the State to effect. Determination by the legislature of what constitutes proper exercise of police power is not final or conclusive, but is subject to supervision by the courts. *Lawton* v. *Steele,* 152 U. S. 133, 137.

"The American people have always regarded education and acquisition of knowledge as matters of supreme importance which should be diligently promoted. The Ordinance of 1787 declares, 'Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.' Corresponding to the right of control, it is the natural duty of the parent to give his children education suitable to their station in life; and nearly all the States, including Nebraska, enforce this obligation by compulsory laws.

"Practically, education of the young is only possible in schools conducted by especially qualified persons who devote themselves thereto. The calling always has been regarded as useful and honorable, essential, indeed, to the public welfare. Mere knowledge of the German language cannot reasonably be regarded as harmful. Heretofore it has been commonly looked upon as helpful and desirable. Plaintiff in error taught this language in school as part of his occupation. His right thus to teach and the right of parents to engage him so to instruct their children, we think, are within the liberty of the Amendment.

"The challenged statute forbids the teaching in school of any subject except in English; also the teaching of any other language until the pupil has attained and successfully passed the eighth grade, which is not usually accomplished before the age of twelve. The Supreme Court of the State has held that 'the so-called ancient or dead languages' are not 'within the spirit or the purpose of the act.' *Nebraska District of Evangelical Lutheran Synod* v. *McKelvie,* 187 N. W. 927. Latin, Greek, Hebrew are not proscribed; but German, French, Spanish, Italian, and every other alien speech are within the ban. Evidently the legislature has attempted materially to interfere with the calling of modern language teachers, with the opportunities of pupils to acquire knowledge, and with the power of parents to control the education of their own.

"It is said the purpose of the legislation was to promote civic development by inhibiting training and education of the immature in foreign tongues and ideals before they could learn English and acquire American ideals; and 'that the English language should be and become the mother tongue of all children reared in this state'. It is also affirmed that the foreign-born population is very large, that certain communities commonly use foreign words, follow foreign leaders, move in a foreign atmosphere, and that the children are thereby hindered from becoming citizens of the most useful type, and the public safety is imperiled.

"That the State may do much, go very far, indeed, in order to improve the quality of its citizens, physically, mentally, and morally, is clear; but the individual has certain fundamental rights which must be respected. The protection of the Constitution extends to all, to those who speak other languages as well as to those born with English on the tongue. Perhaps it would be highly advantageous if all had ready understanding of our ordinary speech, but this cannot be coerced by

methods which conflict with the Constitution—a desirable end cannot be promoted by prohibited means.

"For the welfare of his Ideal Commonwealth, Plato suggested a law which should provide: 'That the wives of our guardians are to be common, and their children are to be common, and no parent is to know his own child, nor any child his parent • • • The proper officers will take the offspring of the good parents to the pen or fold, and there they will deposit them with certain nurses who dwell in a separate quarter; but the offspring of the inferior, or of the better when they chance to be deformed, will be put away in some mysterious, unknown place, as they should be.' In order to submerge the individual and develop ideal citizens, Sparta assembled the males at seven into barracks and intrusted their subsequent education and training to official guardians. Although such measures have been deliberately approved by men of great genius, their ideas touching the relation between individual and State were wholly different from those upon which our institutions rest; and it hardly will be affirmed that any legislature could impose such restrictions upon the people of a State without doing violence to both letter and spirit of the Constitution.

"The desire of the legislature to foster a homogeneous people with American ideals prepared readily to understand current discussions of civic matters, is easy to appreciate. Unfortunate experiences during the late war and aversion toward every characteristic of truculent adversaries were certainly enough to quicken that aspiration. But the means adopted, we think, exceed the limitations upon the power of the State and conflict with rights assured to plaintiff in error. The interference is plain enough and no adequate reason therefor in time of peace and domestic tranquillity has been shown.

> "The power of the state to compel attendance at some school and to make reasonable regulations for all schools, including a requirement that they shall give instructions in English, is not questioned. Nor has challenge been made of the State's power to prescribe a curriculum for institutions which it supports. Those matters are not within the present controversy. Our concern is with the prohibition approved by the Supreme Court. *Adams* v. *Tanner, supra,* p. 594, pointed out that mere abuse incident to an occupation ordinarily useful is not enough to justify its abolition, although regulation may be entirely proper. No emergency has arisen which renders knowledge by a child of some language other than English so clearly harmful as to justify its inhibition with the consequent infringement of rights long freely enjoyed. We are constrained to conclude that the statute as applied is arbitrary and without reasonable relation to any end within the competency of the State."

The conclusiveness of the foregoing precedent in the case at bar will be even clearer if the decision be read in connection with the companion case of *Nebraska District of Evangelical Lutheran Synod* v. *McKelvie,* 262 U. S. 404, 410, decided at the same time. In that case the Lutheran Synod was, like the plaintiff and appellee in the case at bar, an educational corporation. It was engaged in the business of teaching young children. Among other things, it taught them foreign languages. The law-enforcing officers of the state were threatening to arrest its teachers of foreign languages and thus interfere with its school and business. To prevent that, the Lutheran Synod sued to enjoin the county attorney. Following the ruling that the Nebraska Foreign Language Act was un-

constitutional in the *Meyer* case, *supra,* this court awarded the Lutheran Synod an injunction as prayed. 262 U. S. at p. 411. In other words, the act was in each case held to be void as an unreasonable and arbitrary prohibition of an ordinary and lawful business and calling, regardless of the fact that in the one case the calling or business involved was that of an individual, while in the other it was that of a corporation employing individuals as teachers.

In *Hamilton* v. *Vaughan,* 179 N. W. 553, 558 (Mich.), Mr. Justice Fellows used the following language:

> "Before the business of educating the young in the same courses taught in the public schools, before the business of educating the young in the Christian religion, before the business of conducting these parochial schools can be outlawed and prohibited, their prohibition must bear some reasonable relation to the public good, or the public health, or the public morals, or the public safety, or the public welfare. The right to regulate I concede; the right to prohibit I deny."

The impropriety of such a prohibition has been likewise excellently expressed by the Court of Appeals of Kentucky in the case of *Columbia Trust Co.* v. *Lincoln Institute,* 138 Ky. 804, 812-4. There Chief Justice Barker declared—

> "If the teaching of the young to be useful, upright, Christian citizens is not inimical to the public safety, public morals, or the public health, then it must follow that an act which seeks either to prohibit it altogether, or to authorize others to prohibit it, must be invalid. It is difficult to find language to make plainer that which is so obvious as in the proposition before us. The purposes of the institution under discussion include

the whole circle of the solid virtues with which youth may be endowed. Undoubtedly it is a substantial good to educate the youth of the state; and such is the declared policy of the Constitution. Section 183 provides: 'The general assembly shall, by appropriate legislation, provide for an efficient system of common schools throughout the state.' It cannot, then, be in any way injurious to the public to aid in forwarding the great educational policy which the people themselves have declared in their fundamental law,—the giving of every young man and woman in the commonwealth a sound education. And when academic education is supplemented by religious training and special instruction in the agricultural and mechanical arts and sciences, it seems to us that it is contrary to the most obvious public policy that an institution which affords such an education should be in any way blocked or impeded. What good reason can be given for prohibiting the exercise of such a charity as that which we have under discussion, unless it can be shown that education, supplemented by religious training, may be in some way an evil to society? Does not the mind of every virtuous and right-thinking person at once admit that the contrary is true? Do we not know that religious educational training has a tendency to make men more industrious, more virtuous, and better generally, morally and physically? In other words, better, wiser, and more useful citizens. What would be thought of an act which prohibited the farmer from cultivating a piece of land of greater extent than 75 acres, without the permission of his neighbors? By what argument could an act be supported which prohibited a manufacturer from working more than a given number of artisans? And yet it is seriously contended that a school which seeks to make religious, upright, educated citizens may be prevented under the police power of the state as a public nuisance. Education strengthens the mind,

> purifies the heart, and widens the horizon of thought. It magnifies the domain of hope, multiplies the chances of success in life, and opens wide the door of opportunity to the poor as well as to the rich. It makes men better husbands, better fathers, and better citizens. It is not doubted that the legislature, under the police power, may regulate education in many respects. It may prohibit the mingling of white and colored children in the same schools or in schools of immediate proximity. Perhaps, it may be within the police power to prohibit coeducation of the sexes, or to, in any other reasonable way, regulate the mere manner of educating the youth of the state; but to arbitrarily prohibit education is in direct violation of the Bill of Rights."

2. The statute in suit, it will be recalled, was enacted by the voters of Oregon under an initiative petition. Pursuant to the provisions of section 4103 of the Oregon Laws, the proponents of the measure formulated an argument in support of the bill. The text of their appeal is printed in full in appendix I to this brief. It purports to set forth the reasons for the enactment in suit and the objects or ends sought thereby.

The official argument for the initiative measure commences with an encomium upon the public schools. It is unnecessary to dispute the fact that that system has many and great virtues. Loyalty to it, however, does not call for injustice to private education. In *State ex rel. Kelley* v. *Ferguson,* 95 Neb. 63, 73-4, that aspect was well pointed out as follows:

> "The public school is one of the main bulwarks of our nation, and we would not knowingly do anything to undermine it; but we should be careful to avoid permitting our love for this noble insti-

> tution to cause us to regard it as 'all in all' and destroy both the God-given and constitutional right of a parent to have some voice in the bringing up and education of his children. . . . The state is more and more taking hold of the private affairs of individuals and requiring that they conduct their business affairs honestly and with due regard for the public good. All this is commendable and must receive the sanction of every good citizen, but, in this age of agitation, such as the world has never known before, we want to be careful lest we carry the doctrine of governmental paternalism too far, for, after all is said and done, the prime factor in our scheme of government is the American home."

The argument in support of the proposed enactment as officially circulated among the voters of Oregon proceeded as follows (appendix I, p. 24):

> "The assimilation and education of our foreign born citizens in the principles of our government, the hopes and inspiration of our people, are best secured by and through attendance of all children in our public schools.
>
> "We must now halt those coming to our country from forming groups, establishing schools, and thereby bringing up their children in an environment often antagonistic to the principles of our government.
>
> "Mix the children of the foreign born with the native born, and the rich with the poor. Mix those with prejudice in the public school melting pot for a few years while their minds are plastic, and finally bring out the finished product—a true American."

That the assimilation of the foreigner is not a justification for any such prohibitory statute as that now before the court, was expressly decided by this court in *Meyer* v. *Nebraska*, 262 U. S. 390, 402. But the fact is

that the whole contention is fallacious and merely a far-fetched extravagance or pretense. So the court below, with intimate knowledge of the precise local situation, held (p. 29; 296 Fed. at p. 938), and such is, indeed, the plain truth.

Oregon has no substantial unnaturalized immigrant problem. Eighty-five per cent of its population is native-born. Half of the remainder is naturalized and presumably Americanized. Of the children of the seven and a half per cent unnaturalized, only a small number attend private schools. The children of poor, ignorant foreigners do not attend private schools where tuition must be paid for; they generally go to the free public schools. Manifestly, therefore, compelling pupils of private and parochial schools to attend public schools, would not substantially increase the number of foreigners' children already in the public schools.

As we have seen above at p. 7, the official statistics for 1924 show that 175,510 children were attending public schools and only 5,994 private schools. Even if the latter were all foreigners or of foreign parentage—which is, of course, an unwarranted assumption—the result of mixing them with the 175,510 children now in the public schools of Oregon would be all but negligible.

But the whole notion is founded upon a misconception of the situation. The public school is not a "melting pot". Schools are, and obviously must be, located in given districts. If the neighborhood be American, the school there will have a similar character. If, however, it be situated in a poor and foreign quarter, the school will be attended almost entirely by children of the poorer

class of foreigners. That element is inherent in the nature of things, and the statute in suit cannot alter it.

Plain common sense must convince any thoughtful or reflecting person that the child of a foreigner is quite as likely to be assimilated and Americanized in a private or parochial school as in a public school. The course of study and methods of instruction are substantially the same in the private or parochial school although frequently superior. In both kinds of schools the child necessarily meets and comes into close contact with many thoroughly American teachers and scholars. Whatever assimilative influence the public schools exert, the private and parochial schools must needs exert in a like or even greater degree.

The official argument then declares that—

> "The permanency of this nation rests in the education of its youth in our public schools, where they will be correctly instructed in the history of our country and the aims of our government, and in those fundamental principles of freedom and democracy, reverence and righteousness, where all shall stand upon one common level."

But there was no claim in such official argument or in the court below that as a matter of fact and truth American history and the aims of our Governments were not being correctly taught in the private and parochial schools of the state, nor was there any suggestion that the children attending such schools were not being properly or adequately instructed in any fundamental principles of freedom and democracy or in reverence and righteousness. In view of the truth known or available

to every voter, any such claim would have been simply preposterous and readily refuted because well-known to be false.

The private and parochial schools teach the same subjects as the public schools—whatever one does to inculcate and foster patriotism, the other can and does do quite as well. Certainly they can be made to do so by proper regulation, and certainly it is unreasonable and unjust in the extreme to suggest obliquely and by innuendo that the religious schools of the state, Catholic, Episcopalian, Presbyterian, Methodist, Lutheran, etc., do not inculcate reverence and righteousness and are to be classed as "red" or grouped with "bolshevists, syndicalists and communists" as suggested at p. 46 of the brief on behalf of the Governor of Oregon! Nothing in this contention, therefore, called for or warranted destruction of these schools.

As a matter of fact, however, private and parochial schools in Oregon are, and long have been, subject to inspection by the State Superintendent of Public Instruction, and anything prejudicial to the public welfare could easily have been prevented by proper and reasonable supervisional regulation. They are practically required to teach "such branches as are usually taught in the first eight years in the public schools" (appendix I, p. 14). The standards and methods are the equivalent of those which obtain in the public schools. No intimation was made below that the Superintendent of Public Instruction had found that private and parochial schools were not being properly conducted. No such charge is contained even in the official argument in favor of the enactment, and nothing in the record even remotely suggests it, nor did

any of these appellants venture to make any such suggestion in the court below.

The final ground put forward in the official argument is that—

> "Our children must not under any pretext, be it based upon money, creed or social status, be divided into antagonistic groups, there to absorb the narrow views of life as they are taught. If they are so divided, we will find our citizenship composed and made up of cliques, cults and factions each striving, not for the good of the whole, but for the supremacy of themselves. A divided school can no more succeed than a divided nation."

No legislation can proscribe social discrimination, and the statute in the case at bar is singularly inappropriate to that end. Young children do not discriminate against each other; that is a characteristic of maturity. The picking and choosing of friends for reasons based upon money, creed, or social status come, not during elementary school days, but afterwards; and no force thus far vouchsafed to man has ever been equal to the destruction or elimination of social distinctions. How the act in suit could accomplish that result, no one can tell; and, as a reason for annihilating the appellee's useful and honorable business, it amounts to nothing.

The foregoing are all the reasons assigned in the official argument in support of the act.

The briefs of the appellants, however, urge an additional ground, although there is nothing to show that that ground had even the slightest influence with the people of Oregon. It is now intimated that the statute was necessary in order to effectuate compulsory education. But the suggestion is clearly based upon false premises.

It assumes that parents, who contribute through their taxes to the public schools and, in addition, pay that private and parochial schools may educate their children, will not be as zealous to secure for their children at least as good an education as the public schools afford. Again, the argument assumes that private schools teaching for pay would continue to exist for any substantial period of time, if they proved themselves less efficient educationally than the free public schools with which they compete. And, finally, the argument overlooks the fact that regulation is ample to cure the alleged defect; and that it is even now, and for years has been, the duty of the school board to see to it that private schools maintain themselves on at least a parity with corresponding public schools. See section 5259, Oregon Laws, quoted appendix I, pp. 13-14.

The notion that private and public schools cannot exist in peace and harmony side by side, which underlies the act in suit, is not only contradicted by long experience, but is probably held by no competent educator. Experiment in education is practically only possible in private institutions; and, in the past, educational progress has been almost wholly the result of private school effort and initiative. Again, public activities are invariably forwarded by private competition; in that manner contrast which induces restraint and prevents arbitrariness, is at all times at hand. Recently the President of Swarthmore College declared that—

> "The prohibition of private elementary schools means that private enterprise is not to be allowed to do that extremely valuable experimentation that

public agencies rarely find it possible or advisable to attempt."

And Dr. Claxton, the former Commissioner of Education of the United States, has expressed himself as follows:

> "I believe in the public school system. It has been the salvation of our democracy, but the private schools and colleges have been the salvation of our public schools. These private institutions have their place in our educational system; they prevent it from becoming autocratic and arbitrary and encourage its growth along new lines."

Finally, the National Education Association at its latest annual convention, held in Washington in July, 1924, adopted the following resolution:

> "The National Education Association, while recognizing the American public school as the great nursery of broad and tolerant citizenship and of a democratic brotherhood, acknowledges also the contributions made to education by private institutions and enterprises, and recognizes that citizens have the right to educate their children in either public or private schools, when the educational standards of both are approved by the State educational authorities."

It is unnecessary to multiply citations to like effect; unaided reason and practical experience would readily lead us to the same conclusions.

3. Thus far we have considered the enactment in suit only in reference to the rights of the private and parochial schools and the teachers they employ. But there is involved in the case at bar a far more important group of individual rights, namely, the rights of the parents

and guardians who desire to send their children to such schools, and the rights of the children themselves. Reflection should soon convince the court that those rights —which the statute seriously abridges and impairs—are of the very essence of personal liberty and freedom.

Children are, in the end, what men and women live for. Through them parents realize, as it were, a measure of immortality. To the parent the child represents the sum of all his hopes. One's defeated aspirations, his children may achieve; his unfulfilled ambitions, they may realize. All that we missed, lost, failed of, our children may have, do, accomplish, in fullest measure. Thus, they hold in their new, young lives the dearest and most intimate yearnings of the parent's soul. For them parents struggle and amass property and put forth their greatest efforts and strive for an honored name. In return for the enormous sacrifice they make and burden they bear, parents have the right to guide and rear their children to be worthy of them. What right could be more truly and completely of the essence of liberty? *Tillman* v. *Tillman*, 26 L. R. A. (n. s.) 781, 785, *et seq.* (S. Car.). Manifestly so vital and intimate a right may not be invaded by the state without the clearest justification and imperative necessity therefor: "If a state takes hold of the child, the father is no longer free, and tomorrow not a trace of liberty will be left" (Jules Simon, L'Ecole, p. 345).

In this day and under our civilization, the child of man is his parent's child and not the state's. Gone would be the most potent reason for women to be chaste and men to be continent, if it were otherwise. It was entirely

logical for Plato, in his scheme for an "ideal commonwealth," to make women common; if their children were to be taken from them, and brought up away from them by the state for its own ends and purposes, personal morality was, after all, a secondary matter. The state-bred monster could then mean little to his parents; and such a creature could readily be turned to whatever use a tyrannical government might conceive to be in its own interest. In such a society, there would soon be neither personal nor social liberty. "Take away from the parents all care and concern for their children's education, and you make a social life an impossible and unintelligible notion" (Pufendorf's Law of Nature and Nations, book VI, ch. II, sec. 4). It need, therefore, not excite our wonder that to-day no country holds parenthood in so slight esteem as did Plato or the Spartans—except Soviet Russia. There children do belong to the state; as in Plato's "ideal commonwealth", "the pupils [are] regarded as belonging to the state rather than to their parents" (Plato's Laws, book VII), and personal and national freedom are there at their lowest ebb. In final analysis, it is submitted, the enactment in suit is in consonance only with the communistic and bolshevistic ideals now obtaining in Russia, and not with those of free government and American conceptions of liberty.

To us in the United States, living under the blessings of free institutions and of the Constitution which guarantees them, our children mean everything. What more natural, therefore, than that we should, as a vital part of our own and their liberty, be tenderly solicitous about

their education and keenly zealous of our right to guide and control it? What more natural, also, than that we should desire them to be taught our own faith, to cherish whatever religion we accept, to hold fast to the moral precepts taught with or in our own creed, and to learn these things from teachers of our own choosing? Such instruction is, of course, not to be found in the public schools. Nevertheless, to many millions, to a very great and constantly increasing proportion of our people, it will always seem indispensable that the education of their children should not be merely secular; that religious and moral training should not consist merely of a short lesson every Sunday, but should be taught day by day and every day and should accompany, and, indeed, underlie and influence all the ordinary teaching, and should be by those only who are competent to teach religion and whose lives are dedicated to God and His service. In such a system of training a parent may well see the means, and perhaps the only practical means, of saving his child from the crass materialism which more and more tends to possess the minds and hearts of men.

The daily press each week reports some wise and experienced judge of a criminal court as exhorting the public to educate their children in religion and to do so as the most effectual means whereby to assure the moral character and law-abidingness of their children and what the proponents of the present enactment called "reverence and righteousness." Only recently a revolting murder was perpetrated for sport and in cynical disregard of all that was right by two educated young sons belonging to respectable families, and the public prints through-

out the land proclaimed the fact that these young assassins, although amply educated otherwise by parents of large means, had had no religious or moral training worthy of the name.

Earnestly we submit that there is, indeed, great necessity in our land for such schools and such teaching as the appellee Society affords to its pupils. It is, therefore, both proper and reasonable that parents and guardians should deem it a part of their dearest rights and highest liberty that such schools should not be wantonly uprooted and destroyed.

It was doubtless considerations such as the foregoing which prompted Prof. Freund to declare in his learned work on the police power that (sec. 266)—

> "In one respect . . . education must be constitutionally free, namely in so far as it is essential to the freedom of religion; for the free exercise of religion implies teaching as well as worship. The state could certainly not prescribe the religious education of children, in so far as it would thereby establish a religion, or discriminate in favor of one; nor could it suppress all private schools, since religious denominations would thereby be prevented from inculcating their doctrines in the most effectual way."

The great French publicist Guizot pointed out that—

> "All rights in the matter of education do not belong to the state. There are rights which are—I do not want to say superior—but anterior to those of the state and co-exist with them. The first rights are the rights of families. Children belong to families before they belong to the state. The state has the right to furnish teaching, to supervise it, to direct it in its own establishments; it has not the basic right to impose its teaching

> arbitrarily and exclusively upon all families without their consent and contrary to their wishes" (quoted in Biétry, Proposition de loi sur la séparation des écoles et de l'état; session de 1910, p. 63).*

President Butler of Columbia University has stated a similar doctrine, in declaring that—

> "In our American theory, the state steps in, not to monopolize education or attempt to cast all children in a common mold, or forcibly to deprive them of all religious training and instruction, but merely to prevent damage to itself. It offers a free opportunity to every child to receive elementary education, and usually much more than that, in tax-supported schools. But it is in no sense the business of the state, in our American political philosophy, to attempt to monopolize education or to prevent the freest choice by parents of the teachers and schools of their children."

That, we submit, is the sound and true doctrine. It is not seriously debatable that the parental right to guide one's child intellectually and religiously is a most substantial part of the liberty and freedom of the parent. In *Meyer* v. *Nebraska,* 262 U. S. 390, 399-400, this court, upon full citation of authority, declared that—

> "While this court has not attempted to define with exactness the liberty thus guaranteed [by the Fourteenth Amendment to the Constitution], the term has received much consideration and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint, but also the right of the individual to contract, to engage in any of the

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* See also Taparelli, Natural Law, vol. II, pp. 494, 510; Fustel de Coulanges, The Ancient City, 7th ed., p. 293 *et seq.;* Kent's Commentaries,* p. 195.

common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and, generally, to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men."

In *Taylor and Marshall* v. *Beckham* (*No. 1*), 178 U. S. 548, 602-3, Mr. Justice Harlan said:

"The liberty of which the Fourteenth Amendment forbids a State from depriving any one without due process of law is something more than freedom from the enslavement of the body or from physical restraint. In my judgment the words 'life, liberty or property' in the Fourteenth Amendment should be interpreted as embracing every right that may be brought within judicial cognizance, and therefore no right of that kind can be taken in violation of 'due process of law.'

"In *Allgeyer* v. *Louisiana*, 165 U. S. 578, 589, this court unanimously held that the liberty mentioned in the Fourteenth Amendment 'means not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary and essential to his carrying out to a successful conclusion the purposes above mentioned.'

"Judge Cooley, speaking for the Supreme Court of Michigan in *People* v. *Hurlburt*, 24 Mich. 44, after observing that some things were too plain to be written, said: 'Mr. Justice Story has well shown that constitutional freedom means something more than liberty permitted; it consists in the civil and political rights which are absolutely

> guaranteed, assured and guarded; in one's liberties as a man and a citizen—his right to vote, his right to hold office, his right to worship God according to the dictates of his conscience, his equality with all others who are his fellow citizens; all these guarded and protected and not held at the mercy and discretion of any one man or any popular majority. Story, Miscellaneous Writings, 620. If these are not now the absolute rights of the people of Michigan, they may be allowed more liberty of action and more privileges, but they are little nearer to constitutional freedom than Europe was when an imperial city sent out consuls to govern it.' "

See also *Wolff Co.* v. *Industrial Court,* 262 U. S. 522, 534; *Coppage* v. *Kansas,* 236 U. S. 1, 10, 14; *Smith* v. *Texas,* 233 U. S. 630, 636; *People* v. *Gillson,* 109 N. Y. 389, 398-9; *Tillman* v. *Tillman,* 26 L. R. A. (n. s.) 781, 785 *et seq.* (S. Car.).

A reading of the authorities which have heretofore considered the meaning of the constitutional guaranty of "liberty" should, it is submitted, persuade the mind beyond doubt that the parental right herein in issue is of the very essence of the constitutional guaranty embodied in the Fourteenth Article of Amendment to the Constitution of the United States. Compared with it, the right to engage in a business, to teach, to acquire knowledge, to contract, etc., which have had explicit recognition by this court as embraced within the "liberty" contemplated in the Amendment, verily shrink into relative inconsequence.

The statute in suit trespasses, not only upon the liberty of the parents individually, but upon their liberty collectively as well. It forbids them, as a body, to sup-

port private and parochial schools and thus give to their children such education and religious training as the parents may see fit, subject to the valid regulations of the state. In that respect the enactment violates the public policy of the State of Oregon and the liberty which parents have heretofore enjoyed in that state. The highest court of that state declared in *Liggett* v. *Ladd,* 17 Ore. 89, 94, that—

> "The right of mankind to believe and teach such doctrines regarding religion as meet the approval of their consciences is recognized under our form of government as inherent; it is freely accorded to every sect and denomination in the land, and is so interwoven with the principles which underlie our political fabric that it cannot be taken away without the general consent or a violent revolution. The law not only tolerates the privilege, but protects every one in the enjoyment of it. The people are entitled, as an incident of such right, to form associations, adopt creeds, organize churches, and establish seminaries of learning for the advancement of their peculiar tenets of faith, and to acquire property and erect buildings to aid them in accomplishing that end."

The sound common sense which should control in the matters herein in controversy, as well as the true and patriotic rule of constitutional law upon the subject, was tersely and aptly expressed by a former distinguished Vice-President of the United States, Thomas R. Marshall, as follows:

> "I have an old-fashioned notion that in a government where freedom of religion is guaranteed to the citizen, as a father of a child, I have a right to train it along the lines of my own religious belief.

> "I doubt that any officer, however gifted and high-minded he may be, can have a tenderer regard for my child than I myself possess, that he can more sincerely desire his health, happiness and success.
>
> "Unless I develop into such a brute as to be unfit to take care of my child and thus warrant society in removing him permanently from my custody, I should be let alone to look after his health, care for his wants, guide his education and instil into his mind such religious views as I think will enable him to stand against the temptations of a tempestuous world."

See also *Milwaukee Industrial School* v. *Superiors,* 40 Wis. 328, 332; *People* v. *Turner,* 55 Ill. 280; *State ex rel. Sheibley* v. *School District,* 31 Neb. 552, 556; *Trustees* v. *People,* 87 Ill. 303.

4. In whatever light the act in suit be regarded, it must be manifest that, in the end, it embodies the pernicious policy of state monopoly of education. Except in Soviet Russia, there has been none in modern times so poor as to do that discarded doctrine of tyrants any reverence. Courts, publicists, philosophers, pedagogues —all alike have repudiated it. The standardization of education despite the diversity of character, aptitude, inclination and physical capacity of children, which state monopolization of the training and teaching of the young renders inevitable, has found well-nigh universal condemnation. The young minds of the Nation should not be cast in any such straight-jacket and their diversification and individual development dwarfed and prevented. Again, the excess of power which results to the state from such a device, clearly serves to maintain and pre-

serve despotism and checks the normal evolution of liberty. Finally, the removal of competition with private effort offers unlimited opportunity for arbitrariness, and likewise checks experiment, innovation and progress.

The Belgian savant and statesman, Van Humbeeck, uttered this pregnant thought:

> "There never was a tyrannical government—whether the tyranny was exercised by one individual or by the masses—which did not claim the right to educate the rising generations, to form the character of the Nation; and, upon the other hand, there never was a free country in which public opinion did not uphold those who claimed that the individual ideas of the citizens must prevail in matters of education."

A century ago Chancellor Kent wrote in his commentaries upon the common law (*p. 195) that—

> "Several of the states of antiquity were too solicitous to form their youth for the various duties of civil life, even to entrust their education solely to the parent; but this, as in Crete and Sparta, was upon the principle, totally inadmissible in the modern civilized world, of the absorption of the individual in the body politic and of his entire subjection to the despotism of the state."

Chancellor Kent's views were accepted by the courts in *Milwaukee Industrial School* v. *Superiors,* 40 Wis. 328, 332, and *People* v. *Turner,* 55 Ill. 280; and, until the Russian Soviet system came into being in Russia, determined to destroy personal liberty, parental control and religion, and until the statute in suit was enacted in Oregon, for pernicious and intolerant purposes perhaps better left undiscussed in this court, it was doubtless true in modern times that the principle of the total absorption

of the individual in the body politic and his entire subjection to the state, was everywhere in Chancellor Kent's apt words "totally inadmissible."

In his work on liberty, John Stuart Mill included a chapter on the state and education (ch. V, p. 205). Therein he wrote—

> "That the whole or any large part of the education of the people should be in State hands, I go as far as any one in deprecating. All that has been said of the importance of individuality of character, and diversity in opinions and modes of conduct, involves, as of the same unspeakable importance, diversity of education. A general State education is a mere contrivance for moulding people to be exactly like one another: and as the mould in which it casts them is that which pleases the predominant power in the government, whether this be a monarch, a priesthood, an aristocracy, or the majority of the existing generation, in proportion as it is efficient and successful, it establishes a despotism over the mind, leading by natural tendency to one over the body."

In a learned article on education contained in the Encyclopedia Britannica the following will be found (11th ed., p. 960):

> "It is recognized as the duty of the state to insist upon a certain minimum of education for every future citizen. This does not necessitate a monopoly of education on the part of the state, such as was claimed by the Napoleonic despotism under the traditional influence (it would seem) of the old authoritative Gallo-Roman tradition, transformed in its outward manifestation but not in its inward spirit by the French Revolution. Such a monopoly would be plainly repugnant to the spirit of Anglo-Saxon individualism, and it is interest-

> ing to note that attempts to reassert it have in recent times been repudiated in republican France by some of the best exponents of modern thought, as an infringement of personal liberty not calculated to justify itself by any corresponding public gain."

Similar pronouncements have been made by Herbert Spencer (Principles of Sociology, vol. I, sec 321, vol. III, sec. 849), Cardinal Mercier (Ethics, p. 278), Adolphe Thiers (Biétry, Proposition de loi sur la séparation des écoles et de l'état, Session de 1910, p. 63), and a host of others.

It will, therefore, be readily appreciated why President Butler of Columbia University in a recent address on education, was moved to exclaim, in reference to the statute in suit—

> "Fancy, if you can, what the future historian will say of the people of the State of Oregon, who, one hundred and thirty-five years after the adoption of the Constitution of the United States with its Bill of Rights, enact by popular vote a statute which makes elementary education a government monopoly. If Samuel Adams and Benjamin Franklin and Patrick Henry and Thomas Jefferson turn in their graves on learning this news, there need be no surprise."

5. A suggestion made in the argument of the appellants should be briefly noticed, although it is difficult t. believe that it is seriously urged. It is said that the statute does not really suppress the private and parochial schools, because the parent may still send his child to them after the child has attended a whole school day at the public school.

In *Meyer* v. *Nebraska*, 262 U. S. 390, 398, the following was quoted from the court below:

> "The hours which a child is able to devote to study in the confinement of school are limited. It must have ample time for exercise or play. Its daily capacity for learning is comparatively small."

No more need be said. The appellants' argument is plainly unsound and founded upon an impractical notion which no one can accept as a basis for sensible action.

IV.

THE LEGISLATIVE POWER OF A STATE IN RELATION TO EDUCATION DOES NOT INVOLVE THE POWER TO PROHIBIT OR SUPPRESS PRIVATE SCHOOLS AND COLLEGES.

The power and duty of the state to furnish schools for the children whom it commands shall be educated and who otherwise would have no means of education or compliance with the law is, of course, indisputable, and likewise the difficulty, if not impracticability, of teaching religion in the public schools to those children whose parents or guardians desire that they be given adequate religious instruction. Much of the argument of the appellant Governor of Oregon, with its reference to "the rising tide of religious suspicions" and its emphasis upon "the separation of children along religious lines" (brief, p. 40) must mean logically, if pertinent at all to the present discussion, that children should either not be taught religion at all or should be trained in only one religion

prescribed by the state and dictated from time to time by a majority of "the voters of Oregon" as they might determine, and thereby overthrow the sound and beneficent American doctrine of the separation of Church and State. We would then have a recrudescence of the most odious and objectionable of all the tyrannies of the seventeenth and eighteenth centuries: the state compulsorily and oppressively regulating or attempting to regulate the religious beliefs of children.

The familiar statement that education is a public function means no more than that it is a function that the state may undertake, because it vitally interests and concerns the state that children shall be furnished the means of education and not left to grow up in ignorance. But the power of the state to provide public schools carries with it no power to prohibit and suppress private schools and colleges which are competent and qualified to afford what the state wants, namely, education.

Thus, there is no question as to the power of the state to construct and operate public roads, bridges and other means of transportation; yet it would hardly be seriously contended that the state might under the police power forbid the further operation of all private highways, bridges and railroads. Whenever the state desires the use of any such existing facilities for some distinctly public purpose, it can take them only by the exercise of the power of eminent domain. *Los Angeles* v. *Los Angeles Gas & Electric Corporation*, 251 U. S. 32, 38.

Again, a state may undertake the functions of buying and building and selling or leasing homes and of

constructing and operating warehouses, elevators and flour mills (*e. g., Green* v. *Frazier,* 253 U. S. 233); but it would not follow therefrom that the state might prohibit all private enterprise in building, selling, or leasing homes, or by a prohibition render valueless the investment of private capital in warehouses, elevators and flour mills.

The conduct of employment agencies, to cite another example, is clearly of sufficient general and public interest to warrant the state in conducting public employment agencies, but this does not carry with it the power to forbid and suppress private employment agencies. *Adams* v. *Tanner, supra,* 244 U. S. 590. The minority who dissented in this case had no thought that the fact that the enterprise was one into which the state might enter, tended in any way to the conclusion that it was one which the state might monopolize and forbid to private persons. They differed from the majority only as to the degree of the conceded evils arising in connection with private employment agencies and the inadequacy of regulation or of public agencies to counteract these evils (see language of Mr. Justice Brandeis, dissenting, at pp. 597-616).

The present case is wholly outside the principle that where a state may enter upon an undertaking which can be conducted profitably and satisfactorily only as a monopoly, it may prevent competition or the continued use of competing facilities by condemning and destroying property under the power of eminent domain and just compensation. The Oregon enactment is not an exercise of the power of eminent domain. More important still

is the fact that the public school system is in its essence an enterprise not conducted for profit. Hence, the state can suffer no conceivable harm from the co-existence of a private-school system. Private schools in no way interfere with the full freedom of conducting public schools in any way that the state may see fit.

Private education, instead of in any way constituting a menace to education as conducted by the state, has long been a great and valuable aid to the public system. Private schools admit of experimental methods and testing of results much more readily than do public schools. The regimentation and centralized control characteristic of a public school system render it difficult to deal with particular groups in accordance with their special and peculiar needs. Selection and classification of such groups for special treatment, tentative adjustment of methods of instruction, and tentative selection of novel subject matter are much more feasible where parents or guardians have an option as to the particular school or group to which their children shall be assigned. It is almost universally conceded by educational experts that the improved methods of child education which have been first worked out and tested in private schools have been of incalculable benefit to the public schools. More and more the education of children is becoming a science whose principles are slowly being evolved by continuous experimentation and testing of results by trained experts. The law of Oregon puts it beyond the power of individuals to continue independently this process of scientific inquiry. It deprives public education of the benefits to be derived from the manifold and varied investigations

and experiences of teachers unfettered by official superiors and bureaucracy in their efforts to discover the most desirable modes of teaching the youth of our country.

In its essence, the Oregon law is one strangling scientific investigation in private laboratories. Such a strangling, instead of being an aid to public education (as restraint of private lighting and private transportation might be conceived to be an aid to public lighting and public transportation) is a serious loss to public education. In this aspect of the case, the Oregon law is no more within the constitutional power of a state over public education than would be a law forbidding private investigation into the cause and cure of disease, because the state could, as a proper public purpose, undertake similar investigations by public agencies. Such a law would prevent "the making of social experiments that an important part of the community desires",* and deprive the public as a whole of the benefits to be derived from those experiments. It would be denying that "ultimate good desired is better reached by free trade in ideas—that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out."**

The social interests menaced by the suppression of private educational institutions and the denial of lib-

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* Mr. Justice Holmes, dissenting in *Truax* v. *Corrigan*, 257 U. S., at p. 344.

** Mr. Justice Holmes, dissenting in *Abrams* v. *United States*, 250 U. S., at p. 630.

erty to pursue long rooted habits and traditions among our people are peculiarly of the character that the Fourteenth Amendment was most immediately designed to protect from state political action. Private and religious schools and colleges existed in this country long before the Revolution and were indeed then almost the only educational institutions. As Mr. Justice Holmes said in *Laurel Hill Cemetery* v. *San Francisco,* 216 U. S. 358, 366: "Tradition and the habits of the community count for more than logic."

The Fourteenth Amendment had for its primary object the prevention of state legislation calculated to keep one class in subjection to another in respect of opportunities for economic and social advancement, the pursuit of happiness, and the exercise of fundamental rights comprehended in an essential individual liberty—among men fit for freedom. Such was the interest conserved by *Buchanan* v. *Warley,* 245 U. S. 60, which, by declaring unconstitutional a restraint on freedom of property owners to sell land for occupancy by persons of designated colors, insured to the colored race the right to reside where they might through free bargaining secure the opportunity. Similarly *Meyer* v. *Nebraska,* 262 U. S. 390, and *Bartels* v. *Iowa,* 262 U. S. 404, by declaring unconstitutional statutes forbidding the teaching of subjects in foreign languages to children in the elementary grades in private schools, secured to parents the opportunity to place their children where they might study subjects in other languages than English. As to the declared aim and alleged justification for these latter statutes that they tended to promote what is called

Americanization, the answer was that the means used went beyond what was necessary or legitimate and even then gave no assurance of the result. We have already seen that the state may require instruction in private schools in the subject matters essential to a proper understanding of the institutions of the country and that the Oregon legislature has so enacted (appendix I, pp. 16, 18). But it does not follow that it can take substantially the whole available school time of the children to accomplish this particular purpose. It was obvious that teaching in English was a useful means toward the end of Americanization. Yet the court held that this legitimate purpose did not justify complete prohibition of the teaching of subjects in other languages than English. Surely, if the state cannot forbid the teaching of a single subject in a specified way or enforce such a limited restraint upon individual liberty to teach, *a fortiori* it cannot forbid the teaching of all subjects in any way whatsoever!

In the present case, as in those cited, there is the same interference with the freedom of property owners and of parents, and there is at stake the same social interest of freedom from state compulsion and bureaucracy in respect of the opportunities for self-advancement and self-development and the inalienable right to liberty.

This becomes more readily manifest by taking into account the untrammeled power of the state in the conduct of its public business and public institutions. *Waugh* v. *Mississippi University*, 237 U. S. 589; *Heim* v. *McCall*, 239 U. S. 175; *Crane* v. *New York*, 239 U. S. 195. These decisions make it clear that the state, as the proprietor

and conductor of educational institutions, is free from the restraints of the Fourteenth Amendment. The principle is firmly established that the judiciary cannot supervise the discriminations incident to the administration of a public service rendered by the Government or discriminations in the choice of public employees.

It is clear, therefore, that the state in conducting public schools has a free hand in its own institutions in prescribing the curriculum, in selecting the teachers, in grading the pupils, and in apportioning the public funds. There could be no judicial relief if the state limited the subjects to be taught. No court could in practice serve successfully as an appellate board of education or superintendent of schools even if it recognized a constitutional power to do so. Thus, Oregon by its present statute assumes an arbitrary power to discriminate as it pleases in deciding what children shall be taught, what shall be taught to children, and by whom it shall be taught. If Oregon may do this, so may every other state in the Union. There are no peculiar conditions in Oregon to be adduced in support of this statute, corresponding to the peculiar conditions adverted to by Mr. Justice Holmes in his dissent in *Bartels* v. *Iowa*. If this court now sustains the suppression of private educational institutions for the elementary grades in Oregon, it sanctions a power to suppress the teaching of subjects in any language but English, and to preclude large groups of citizens from exercising that reasonable freedom of choice as to the type of education desired for their children, and thereby to accomplish by a suppression of private schools what could not constitutionally be re-

quired as a regulation thereof. If this may be done for the elementary grades, it is hard to see why it cannot be done for high-school and collegiate education in every state of the Union.

Should such a statute as is now before the court be held to be constitutional, any dominant political group could monopolize all education, could destroy large values invested in private educational institutions, could arbitrarily exclude large classes of the population from the pursuit of their chosen vocations, could impose curricula which make for the stratification or leveling of the population, and could to a very large degree in practical effect control private opinion on religious and social issues. As an instrument for promoting the subservience of one group in the population to another, this statute has had no parallel in the history of American legislation and nowhere else except in Soviet Russia. It is not, like some statutes that have been sustained, an instrument for enlarging the freedom of one class by restricting the freedom of another. Oregon is not choosing between two competing liberties which cannot co-exist. The liberty of parents to send their children to private schools in no way interferes with the liberty of other parents to send their children to public schools. The liberty of teachers to teach in private schools in no way interferes with the liberty of other teachers to teach in public schools. By this statute, in a word, there is a net loss to the liberty of the individual guaranteed and protected by the Fourteenth Amendment which equals the gross loss caused by its immediate incidence, for no conceivably equivalent benefit can reasonably result.

V.

THE STATUTE IMPAIRS THE OBLIGATION OF THE CONTRACT EMBODIED IN THE APPELLEE'S CORPORATE CHARTER.

The *Dartmouth College case,* 4 Wheat. 518, conclusively settled the rule of law that the corporate charter of an educational institution may be a contract within the meaning and protection of section 10 of Article I of the Constitution of the United States forbidding the states to pass any law impairing the obligation of contracts. Turning to the charter of the plaintiff-appellee (pp. 14-6), it will be seen that it was incorporated expressly to educate and instruct youth and to establish and maintain schools (art. II) and to do so for profit (art. III). Quite plainly the statute in suit materially interferes with the rights granted to the plaintiff in and by this charter.

The corporation laws under which the appellee exists as a corporation (Deady's Code, 1886, pp. 632-4, as amended by General Laws of Oregon for 1903, pp. 176-7) do not contain any provision empowering the state to alter, amend, or repeal the charter; and the constitutional provision which was in force in Oregon when the appellee was organized (sec. 2, Art. XI), while permitting the corporation laws of the state to be altered, amended, or repealed, nevertheless, expressly limited that power by providing that it was not to be exercised "so as to impair or destroy any vested corporate rights".

The highest court of the State of Oregon has authoritatively construed this constitutional provision. *Liggett* v. *Ladd*, 17 Ore. 89; *Lornsten* v. *Union Fishermen's Co.*, 71 Ore. 540. In the cases cited it was held that a corporation had a vested right to its corporate name which subsequent legislation of the state could not impair. If that be so, *a fortiori* the right granted to the plaintiff-appellee upon its incorporation to maintain and conduct schools for pay, is likewise a vested right within the meaning of the Oregon constitutional provision above referred to; and, as such, may not be impaired or destroyed by the legislature. The enactment in suit is, consequently, void, not only because of this provision of the Oregon constitution, but also because it impairs the obligation of a contract in violation of section 10 of Article I of the Constitution of the United States.

The case of *Berea College* v. *Kentucky*, 211 U. S. 45, is plainly distinguishable from the case at bar. There the charter of the corporation had been granted under a statute containing a reservation to the state of power to amend, alter, or repeal the corporation laws without any limitation whatever. This reservation of power conferred upon the legislature of Kentucky a free hand. But in the present case, as has been seen, the Oregon constitution and corporation laws did not confer on the Oregon legislature any such plenary power. Where "vested corporate rights" would be impaired or destroyed, the Oregon legislature was left with no amendatory power at all; and when, therefore, the voters by initiative petition attempted to exercise such a power in and by the enactment now before this court, they violated both the state and the federal Constitution.

The foregoing considerations make peculiarly pertinent the following passage from the dissenting opinion of Mr. Justice Harlan in the *Berea College case,* 211 U. S. at p. 67:

> "The capacity to impart instruction to others is given by the Almighty for beneficent purposes and its use may not be forbidden or interfered with by Government—certainly not, unless such instruction is, in its nature, harmful to the public morals or imperils the public safety. The right to impart instruction, harmless in itself or beneficial to those who receive it, is a substantial right of property—especially, where the services are rendered for compensation. But even if such right be not strictly a property right, it is, beyond question, part of one's liberty as guaranteed against hostile state action by the Constitution of the United States. This court has more than once said that the liberty guaranteed by the Fourteenth Amendment embraces 'the right of the citizen to be free in the enjoyment of all his faculties,' and 'to be free to use them in all lawful ways.' *Allgeyer* v. *Louisiana,* 165 U. S. 578; *Adair* v. *United States,* 208 U. S. 161, 173."

Conclusion.

The ruling of the court below granting the preliminary injunction on the ground that the Oregon Compulsory Public School Law, adopted under Initiative Petition November 7, 1922, was unconstitutional in that it violated the guaranties contained in the Fourteenth Article of Amendment to the Constitution of the United States, was correct, and the order appealed from should, therefore, be affirmed.

New York, February, 1925.

William D. Guthrie,
Bernard Hershkopf,
Of counsel for appellee.

FILED
MAR 9 1925
WM. R. STANSBURY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1924.

No. 583.

WALTER M. PIERCE, as Governor of the State of Oregon; ISAAC H. VAN WINKLE, as Attorney-General of the State of Oregon, and STANLEY MYERS, as District Attorney for Multnomah County, State of Oregon,

Appellants,

vs.

THE SOCIETY OF THE SISTERS OF THE HOLY NAMES OF JESUS AND MARY,

Appellee.

APPENDIX I
(revised)

TO

BRIEF ON BEHALF OF APPELLEE.

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NORTHWEST ORDINANCE OF JULY 13, 1787.*

Preamble—

For extending the fundamental principles of civil and religious liberty, which forms the basis whereon these republics, their laws, and constitutions are erected; to fix and establish those principles as the basis of all laws, constitutions and governments which forever hereafter shall be formed in said territory . . .

. . . It is hereby ordained and declared . . . That the following articles shall be considered as articles of compact between the original states and the people, and states in the said territory. . . .

ARTICLE I.

No person demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship or religious sentiments, in the said territory.

ARTICLE II.

. . . No man shall be deprived of his liberty or property, but by the judgment of his peers, or the law of the land; and, should the public exigencies make it necessary, for the common preservation, to take any person's property, or to demand his particular services, full compensation shall be made for the same. And, in the just preservation of rights and property, it is understood and declared, that no law ought ever to be made,

* 1 Stat. 50.

or have force in the said territory, that shall, in any manner whatever, interfere with, or affect private contracts or engagements, *bona fide*, and without fraud previously formed.

ARTICLE III.

Religion, morality, and knowledge, being necessary to good government, and the happiness of mankind, schools and the means of education shall forever be encouraged. . . .

FUNDAMENTAL LAW OF OREGON.*

(Adopted July 26, 1845.)

Provisional Government of Oregon.

ORGANIC LAW OF THE PROVISIONAL GOVERNMENT OF OREGON (1845).

Preamble: For the purpose of fixing the principles of civil and religious liberty, as the basis of all laws and constitutions of government, that may hereafter be adopted,—

Be it enacted,—That the following articles be considered articles of compact among the free citizens of this territory:

ARTICLE I.

Sec. 1. No person demeaning himself in a peaceable and orderly manner, shall ever be molested upon account of his mode of worship, or religious sentiments.

* See Act of Congress of Aug. 14, 1848, 9 Stat. 323, 329.

Sec. 2. . . . No man shall be deprived of his liberty, but by the judgment of his peers or the law of the land; and should the public exigencies make it necessary for the common preservation, to take any person's property, or to demand his particular services, full compensation shall be made for the same; and in the just preservation of rights and property, it is understood and declared, that no law ought ever to be made, or have force in said territory, that shall, in any manner whatever, interfere with or affect private contracts or engagements, *bona fide* and without fraud, previously formed.

Sec. 3. Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall be forever encouraged.*

Constitution of Oregon, 1857.

(Effective February 14, 1859)†

ARTICLE I.

Bill of Rights.

Sec. 1. We declare that all men, when they form a social compact, are equal in right; that all power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety, and happiness; and they have at all times a right to alter, reform, or abolish the government in such manner as they may think proper.

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* These three sections are substantially the same as and were undoubtedly taken from the Northwest Ordinance of 1787.

† This is the present constitution of the State of Oregon with various amendments adopted from time to time. Oregon Laws, vol. i, pp. 73-189.

Sec. 2. All men shall be secured in the natural right to worship Almighty God according to the dictates of their own consciences.

Sec. 3. No law shall in any case whatever control the free exercise and enjoyment of religious opinions, or interfere with the rights of conscience.

Sec. 4. No religious test shall be required as a qualification for any office of trust or profit.

Sec. 5. No money shall be drawn from the treasury for the benefit of any religious or theological institution, nor shall any money be appropriated for the payment of any religious services in either house of the legislative assembly.

Sec. 10. . . . every man shall have remedy by due course of law for injury done him in his person, property, or reputation.*

Sec. 33. This enumeration of rights and privileges shall not be construed to impair or deny others retained by the people.

ARTICLE IV.

Sec. 1. The legislative authority of the State shall be vested in a legislative assembly, consisting of a senate and house of representatives, but the people reserve to themselves power to propose laws and amendments to the constitution and to enact or reject the same at the polls, independent of the legislative assembly, and also reserve power at their own option to approve or reject at the polls any act of the legislative assembly. The first power reserved by the people is the initiative, and not more than eight per cent of the legal voters shall be required to propose any measure by such petition, and every such petition shall include the full text of the measure so proposed. Initiative petitions shall be filed with the secretary of state not less than four months before

* This section is equivalent to the usual "due process" clause, State v. Thompson, 47 Ore. 492.

the election at which they are to be voted upon. The second power is the referendum, and it may be ordered (except as to laws necessary for the immediate preservation of the public peace, health, or safety), either by the petition signed by five per cent of the legal voters, or by the legislative assembly, as other bills are enacted. Referendum petitions shall be filed with the secretary of state not more than ninety days after the final adjournment of the session of the legislative assembly which passed the bill on which the referendum is demanded. The veto power of the governor shall not extend to measures referred to the people. All elections on measures referred to the people of the State shall be had at the biennial regular general election, except when the legislative assembly shall order a special election. Any measure referred to the people shall take effect and become the law when it is approved by a majority of the votes cast thereon, and not otherwise. The style of all bills shall be: "Be it enacted by the people of the state of Oregon." This section shall not be construed to deprive any member of the legislative assembly of the right to introduce any measure. The whole number of votes cast for justice of the supreme court at the regular election last preceding the filing of any petition for the initiative or for the referendum shall be the basis on which the number of legal voters necessary to sign such petition shall be counted. Petitions and orders for the initiative and for the referendum shall be filed with the secretary of state, and in submitting the same to the people he, and all other officers shall be guided by the general laws and the act submitting this amendment, until legislation shall be especially provided therefor.*

* (Initiative amendment adopted by the people June 2, 1902.)

OREGON LAWS RELATING TO PRIVATE SCHOOLS IN FORCE PRIOR TO 1919.

Education in Oregon from the beginning of its history has been largely in private hands, and private activity in this field early received state approval. While Oregon was yet a territory (1848-1859), there were incorporated by special laws many private denominational schools and academies; some of them Baptist, some Episcopalian, some Congregational, and so forth. (Local Laws of Oregon 1851-52, p. 25; Special Laws 1855-56, p. 38; Special Laws 1855-56, p. 59; Special Laws 1855-56, p. 73; Special Laws 1856-57, p. 86; General Laws 1856-57, p. 36; Special Laws 1856-57, p. 44; Special Laws 1856-57, p. 71; Special Laws 1857-58, p. 86; Special Laws 1857-58, pp. 9, 19, 48 and 95.) These special laws generally provided that vacancies on the board of trustees should be filled by the local religious authorities of the particular denomination.

In 1885, the legislature provided a method of voluntary reorganization of all previously incorporated denominational colleges, etc. (L. 1885, p. 109; Oregon Laws, sections 7014-7021).

The Oregon Statutes permitting the incorporation of "religious, charitable and educational corporations," extend back to General Laws 1872, p. 126 (amending Act of October 24, 1864), and are now contained in Oregon Laws, Secs. 6998-7044.

The first compulsory school law was enacted in 1889 (Laws 1889, p. 111) and re-enacted in 1901 (Laws 1901, p. 300), *post* pp. 7-9.

DEADY'S ORGANIC AND OTHER GENERAL LAWS OF OREGON (1845-1864) p. 633.

AN ACT providing for the incorporation of churches and religious, benevolent, literary and charitable societies, which took effect by operation of the constitution, Jan. 20, 1865.*

Sec. 1. That whenever any church or religious, benevolent, literary or charitable society, shall desire to incorporate for the purpose of carrying out the objects of said church or society, they may do so in the manner provided in this act.

Sec. 2. Three or more of the officers or trustees of said church or society, which officers or trustees shall have been duly chosen, elected or appointed in accordance with the usages and regulations of said church or society, shall make and subscribe written articles of incorporation in triplicate, and acknowledge the same before some officer authorized to take the acknowledgment of deeds, and file one of such articles in the office of the secretary of state, another in the clerk's office of the county where the church or society is located, and retain the third in the possession of the corporation.

Sec. 3. The articles of incorporation, or a certified copy of the one filed in the office of the secretary of state or county clerk, shall be evidence of the existence of such corporation.

Sec. 4. The articles of incorporation shall specify:

1. The name assumed by the corporation, and by which name it shall be known, and the duration of the same, if limited;

2. The object, business or pursuit of said corporation;

3. The estimated value of property and money possessed by said church or society, at the time of making

* See corresponding provisions in Oregon Laws, 1920, sections 6998-7003, inclusive.

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3. The estimated value of property and money possessed by said church or society, at the time of making

* See corresponding provisions in Oregon Laws, 1920, sections 6998-7003, inclusive.

said articles of incorporation, and the sources of revenue or income;

4. The title of the officers or trustees making such articles, and the mode and times of the election of their successors in office;

5. The location of said church or society.

Sec. 5. Upon the making and filing of articles of incorporation, as herein provided, the persons subscribing the same, and their successors in office, associates and assigns, by the name assumed in such articles, shall thereafter be deemed a body corporate with power:

1. To sue and be sued;

2. To contract and be contracted with;

3. To have and use a corporate seal, and the same to change at pleasure;

4. To purchase, receive, possess and dispose of such real and personal property as may be necessary or convenient, to carry out the object of said corporation;

5. To make by-laws, not inconsistent with any existing law, for the government of its affairs, and the management of its property.

Sec. 6. The powers vested in such corporation, are exercised by the corporators, and their successors in office, *Provided,* That said vested powers may be exercised by a majority of said corporators or successors; and any one of said corporators or successors may verify any pleading made by the corporation, and required by law to be verified.

Sec. 7. No corporation formed under this act shall ever hold or possess property, including money and assets, amounting in value to more than five hundred thousand dollars, and any corporation violating this provision of this act, shall forfeit its corporate rights.

Approved October 24, 1864.

LAWS OF OREGON, 1872, p. 126.

AN ACT to amend an Act entitled "An Act providing for the incorporation of churches, religious, benevolent, literary and charitable societies," approved October 24, 1864.*

Be it enacted by the Legislative Assembly of the State of Oregon:

Section 1. That Section 1, of an Act entitled "An Act to amend an Act entitled 'An Act providing for the incorporation of churches, benevolent, literary and charitable societies,'" approved October 24, 1864, be amended so as to read as follows:

Sec. 1. That whenever any church, or religious, benevolent, literary or charitable society, or any society which shall have for its object the development of the physical or mental capacities of its members shall desire to incorporate for the purpose of carrying out the object of said church or society, they may do so in the manner provided in this Act.

Sec. 2. That said Act be further amended by adding thereto the following sections to be numbered 8, 9 and 10:

Sec. 8. That any number of persons, not less than three, being the duly appointed or elected wardens and vestrymen of any parish or congregation of the Protestant Episcopal Church of the United States, in the State of Oregon, according to the canons, rules and regulations of said church, may become incorporated, by making, acknowledging and filing articles of incorporation for such purpose, in conformity with the canons, rules and regulations of said church, upon the organization and incorporation of parishes and the provisions of this Act; and upon the making and filing of such articles of incorporation as aforesaid, such wardens and vestrymen and their successors in office, shall, by the name assumed therein, be thereafter taken and deemed to be a body corporate with the powers prescribed and mentioned in Section 5 of this Act.

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* See corresponding provisions in Oregon Laws, 1920, sections 6998, 7004-7006, inclusive.

Sec. 9. That any person being the bishop, overseer, or presiding elder of any church, or religious denomination in this State, may in conformity with the constitution, canons, rules, regulations and discipline of such church or denomination, become a corporation sole for religious and educational purposes in the manner prescribed in this Act, as nearly as may be, and thereupon said bishop, overseer, or presiding elder as the case may be, together with his successors in office or position, by his official designation, shall be held and deemed to be a body corporate with all the rights and powers and subject to the limitations prescribed in this Act in the case of corporations aggregate.

Sec. 10. That the provisions of this Chapter shall be so construed as to include all such charitable societies as have heretofore been or shall hereafter be composed in whole or in part of married women; and married women are hereby declared eligible to hold office in such societies, and act as trustees thereof, under the provisions of this Chapter the same as other persons, and no liability shall attach to the husband of any such married woman in consequence of any act resulting from such official position by his wife.

Approved October 28, 1872.

LAWS OF OREGON, 1885, p. 109.

AN ACT to regulate the Amending of Charters of such Universities or Colleges as are under the Patronage of one or more Religious Bodies in the matter of Electing Trustees.*

Be it enacted by the Legislative Assembly of the State of Oregon:

Section 1. The board of trustees of any university or college heretofore incorporated and now under the patronage of one or more conferences, or other religious bodies of any religious denomination, may accept the provisions of this and the seven succeeding sections, by

* See corresponding provisions in Oregon Laws, 1920, sections 7014-7021, inclusive.

resolution, adopted at any regular meeting of the board and entered upon the records of its proceedings, and after such acceptance the board shall in all respects be organized, constituted, regulated and perpetuated, pursuant to and under such provisions; but no right acquired by any such board or any such university or college, under its charter, or any law of this State, shall be invalidated or affected by such provisions.

Sec. 2. The president of such university or college shall be a trustee, ex-officio.

Sec. 3. The board of trustees shall elect by ballot, at its regular annual meeting at which these provisions shall have been first adopted, nine trustees, to wit: three for the term of three years, three for the term of two years, and three for the term of one year, and at each annual meeting thereafter, perpetually, the board shall elect three trustees for the term of three years.

Sec. 4. The patronizing conference, or other patronizing religious body within whose territorial bounds such university or college is located, shall have the right, at the first election under these provisions, to elect twelve trustees, to wit: Four for the term of three years, four for the term of two years, and four for the term of one year, and four each year thereafter, perpetually, for the term of three years.

Sec. 5. Each additional patronizing conference, or other patronizing religious body, shall have the right to elect not more than one-half the number of trustees as are authorized to be elected by the aforesaid patronizing conference or other patronizing religious body, and for the same terms of office.

Sec. 6. The alumni of such university or college, who have been graduates three years, shall have the right to elect three trustees at the first election under these provisions, to-wit: One for the term of three years, one for the term of two years and one for the term of one year, and each year thereafter, perpetually, one trustee for the term of three years, but the board of trustees shall determine the day, the number necessary to constitute a quorum, and make such additional

regulations relative to this election, as they may deem right and proper.

Sec. 7. The board of trustees shall have power to determine the conditions and requirements by which a conference or other religious body shall be constituted a patronizing conference or other patronizing religious body, providing that each of the said patronizing conferences, or other patronizing religious bodies, shall be of the same denomination as the original patronizing conference, or other religious body; and Provided, further, That no patronizing conference, or other patronizing religious body shall be discontinued as such, except at its own request, so long as it continues to exercise its right of electing trustees.

Sec. 8. Vacancies in the board of trustees, caused by death, resignation, or otherwise, may be filled for the unexpired term.

Approved February 25th, 1885.

GENERAL LAWS OF OREGON, 1889, p. 111.

AN ACT to increase the efficiency of our common schools.

Be it enacted by the Legislative Assembly of the State of Oregon:

SECTION 1. Every parent, guardian or other person in this State having control or charge of a child or children between the ages of eight and fourteen years shall be required to send such child or children to a public school for a period of at least twelve weeks in each school year, of which at least eight weeks' school be consecutive, unless the bodily or mental condition of such child or children has been such as to prevent his or her or their attendance at school or application to study for the period required, *or unless such child or children are taught in a private school* or at home in such branches as are usually taught in primary schools,* or have already acquired the ordinary branches of learning taught in the public schools; provided, in case a public school shall not be taught for the period of twelve weeks, or any part thereof during the year, within two miles by the nearest traveled road of the residence of any person within the school district, he or she shall not be liable to the provisions of this Act.

SECTION 2. Any parent, guardian or other person having control or charge of any child or children failing to comply with the provisions of this Act shall be liable to a fine of not less than five dollars nor more than twenty-five dollars for the first offense, nor less than twenty-five dollars nor more than fifty dollars for the second and each subsequent offense, besides the cost of the prosecution.

SECTION 3. It shall be the duty of the directors and clerk of each school district to make diligent effort to see that this law is enforced in their respective districts.

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* Italics not in original.

SECTION 4. Justices of the peace shall have concurrent judisdiction with the circuit court in all prosecutions under this Act.

SECTION 5. Inasmuch as many children are now permitted to remain away from school without cause and to their great detriment, this law shall take effect and be in force from and after its approval by the Governor.

Approved February 25, 1889.

GENERAL LAWS OF OREGON, 1901, p. 300.

AN ACT to amend section 1 of an act entitled "An act to increase the efficiency of our common schools."

Section 1. . . . Every parent, guardian or other person in this state having control or charge of a child or children between the ages of eight and fourteen years shall be required to send such child or children to a public school for a period of at least twelve weeks in each school year, of which at least eight weeks of school shall be consecutive, unless the bodily or mental condition of such child or children has been such as to prevent his, or her, or their attendance at school or application to study for the period required, *or unless such child or children are taught in a private school or at home in such branches as are usually taught in primary schools,* or have already acquired the ordinary branches of learning taught in the public schools; provided, in case a public school shall not be taught for the period of twelve weeks, or any part thereof, during the year, within two miles by the nearest traveled road of the residence of any person within the school district, he or she shall not be liable to the provisions of this act; provided further, that, whereas the state has provided an institution for the free instruction of all resident deaf-mute children of lawful school age, every parent, guardian or person having control of any child or children afflicted with deafness shall be required, under the penalties hereinbefore specified, to send such child or children to said institution for a period of not less than six (6) months of each year, between the ages of eight (8) and sixteen (16) years, unless such child or

children be taught in a private school, at home, or in a similar institution in another state, in such branches as are taught in the primary and intermediate grades of said institution, or unless such child or children be excused by the authorities on account of his, her or their physical or mental disability; provided, that such child or children shall be required to attend said institution, as hereinbefore provided, not less than six (6) months of each year for five (5) years, or until he, she or they have arrived at the limit of the lawful school age. . . .

Approved February 27, 1901.

MISCELLANEOUS LAWS—OREGON—ANNOTATED CODES AND STATUTES—BELLINGER AND COTTON (1902), Vol. 2, p. 1672.

CHAPTER VI. Of Religious, Charitable and Educational Corporations.

§5182.*—Religious, Literary and Charitable Societies May Incorporate.

Whenever any church, or religious, benevolent, literary or charitable society, or any society which shall have for its object the development of the physical or mental capacities of its members, or the development of agriculture or mechanics, shall desire to incorporate for the purpose of carrying out the object of said church or society, they may do so in the manner provided in this chapter. [L. 1864, D. Cd. p. 633, §1, L. 1872, p. 126, §1; L. 1876, p. 13, §1; H. C. §3295.]

§5199.†—Incorporation of Denominational Schools.

The board of trustees of any university or college heretofore incorporated and now under the patronage of one or more conferences, or other religious bodies of any religious denomination, may accept the provisions of this and the seven succeeding sections, by resolution, duly adopted at any regular meeting of the board, by a vote of two thirds of all the members of such board of trus-

* See Oregon Laws, section 6998.

† See Oregon Laws, section 7014.

tees, and entered upon the records of its proceedings, and after such acceptance, the board shall in all respects be organized, constituted, regulated, and perpetuated pursuant to and under such provisions; but no right acquired by any such board or any such university or college under its charter or any law of this state shall be invalidated or affected by such provisions. [L. 1885, p. 109, §2; H. C. §3313.]

§5207.* Supplementary Articles May Be Filed, Notice of.

Three or more officers or trustees of any incorporated religious, benevolent, literary, or charitable society, or any society which shall have for its object the development of the physical or mental capacities of its members, or the development of agriculture or mechanics, may file supplementary articles of incorporation at any time, when a three fourths' vote of the members present at a special meeting of any such society called for that purpose shall so determine, for the purpose of amending, enlarging, or changing the object, business, or pursuit of any such incorporated society, not extending beyond religious, benevolent, literary, educational, social, or charitable purposes: Provided, however, that said officers or trustees shall have first caused to be published a notice of the time and place of holding said special meeting, and the object thereof, in some daily newspaper of general circulation published within the county where said corporation is located; and it shall be the duty of the secretary of said corporation to deposit in the post office, not less than ten days prior to the time fixed for said special meeting, written or printed notices, directed to each member of said corporation at their post office address, stating the time and place of such special meeting, and the object thereof. A failure on the part of the officers of said corporation to give the notices herein prescribed shall invalidate any supplementary articles of incorporation adopted at such meeting. Nothing in this section shall be construed as applying to any corporation in this state other than those incorporated under the general statutes of this state. [L. 1891, p. 121, §1.]

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* See Oregon Laws, section 7022.

GENERAL LAWS OF OREGON, 1903, p. 176.

AN ACT to amend section 5182 of the laws of the State of Oregon, as compiled and annotated by Hon. C. B. Bellinger and W. W. Cotton, so as to include educational, scientific, fine art, musical, engraving, and architectural societies, and to ratify and confirm all attempted incorporations thereof under the provisions of this chapter.*

Be it enacted by the People of the State of Oregon; and, also, Be it enacted by the Legislative Assembly of the State of Oregon:

Section 1. That section 5182 of the laws of the State of Oregon, as compiled and annotated by Hon. C. B. Bellinger and W. W. Cotton, be amended so as to read as follows:

Section 5182. Whenever any church, religious, benevolent, literary, educational, scientific, fine art, musical, sculptural, engraving, architectural, or charitable society, or any society which shall have for its object the development of the physical or mental capacities of its members or others, or the development of architecture or mechanics, shall desire to incorporate for the purpose of carrying out the objects of such church, school, or society, they may do so in the manner provided in this chapter; and in all cases in which articles of incorporation have heretofore been filed with the Secretary of State of this state, and with the proper county clerk, by any educational, scientific, fine art, musical, sculpturing, engraving, or architectural society, and one or more of its purposes is to conduct a fine art, musical, sculpturing, engraving, architectural, dental, or other school, and have attempted to incorporate under the provisions of this chapter, such artcles of incorporation are hereby ratified and confirmed, and from henceforth they shall be deemed bodies corporate under the provisions of this chapter.

Passed the senate February 12, 1903.

Passed the house February 20, 1903.

Approved February 24, 1903.

Filed in the office of the Secretary of State February 24, 1903.

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* See Oregon Laws, section 6998.

CHAPTER 129, GENERAL LAWS, 1907, p. 237.

AN ACT authorizing the formation of religious corporations.

Section 2. The archbishop of any diocese may associate with him the vicar-general and chancellor of such diocese, and they, or a majority of them, shall designate or associate with them two other members of such religious denomination, residents of such diocese, and upon signing and acknowledging in triplicate articles of incorporation . . . the said five persons and their successors shall become a corporation, with power to . . . establish and conduct schools, seminaries, and colleges. . . .

CHAPTER 79, GENERAL LAWS, 1907, p. 133.

AN ACT to provide for the compulsory education of children. . . .

Section 1. Every parent, guardian or other person in the State of Oregon having control and charge of any child or children between and including the ages of nine and fourteen years of age . . . shall be required to send such child or children to the public schools for a term or period of not less, nor more, than that of the number of months of public school held annually in the district . . . *provided,* that in the following cases children shall not be required to attend the public schools:

(a) Any child, or children, who is, or are, being taught for a like period of time in a private or parochial school, such branches as are usually taught in the first eight years in the public schools, or has, or have, already acquired the ordinary branches of learning taught in such schools. . . .

Filed in the office of the Secretary of State, February 23, 1907.

CODIFICATION—LAWS OF OREGON (1919).

The statutes of Oregon, including those relating to education, were codified in 1919 pursuant to chapter 266 of the Laws of 1919, and as codified are known as the "Oregon Laws". The sections relating to education are those to be found in sections 4915-5532. Section 5259 expressly recognized attendance at parochial schools as compliance with the statutory requirement.

Title XXXI (Secs. 4915-5532).

Sec. 4915 establishes the office of State Superintendent of public instruction. Sec. 4918 defines his duties, which are those of "general superintendence of the county and district school officers and the public schools of the state." Paragraph 4 provides that "He shall visit in person when practicable all the chartered educational institutions of the state, and shall secure such statistical information relative to the number of students, teachers, value of property, libraries, salaries, and courses of study, as he may deem advisable for the advancement of education and for the information of the legislature."

Secs. 4920-4960, provide for the certification and examination of teachers. Certificates are of various grades, and are issued by state, county and district authorities, and sec. 4958 provides that "Any certificate to teach . . . may be revoked by the authority authorized to grant the same upon the written complaint of any county superintendent, for immorality, intemperance, crime against the law of the state, or gross neglect of duty, . . ."

Sec. 4950 provides for a person selected by the Catholic Educational Society of Oregon to serve as a member of the State Board of Standardization.

Sec. 4953 defines a "teachers' training course," and includes thereunder "a study of American history."

Sec. 4954, relates to temporary county certificates issuable to holders of valid certificates in other states, "when the applicant for the same shall present satisfactory testimonials of good character and success as a teacher."

Secs. 4961-4965 establish a state board of education, with power (sec. 4963) to authorize textbooks, prepare curricula for grammar grades, prescribe rules for the general government of the schools, and

> "To grant state certificates and state diplomas to such persons as are found, upon examination by the state board of examiners hereinafter defined, to possess a good moral character, thorough scholarship, and successful experience in teaching. The examination for state certificates and state diplomas shall be upon questions prepared by the state board of examiners; said questions shall be based on the text books adopted by the state, and shall cover all the branches required for a first grade county certificate, and, in addition thereto, algebra, bookkeeping, composition, physical geography, physics, and psychology; those for state diplomas, in addition to the foregoing, botany, plane geometry, general history, and English literature."

Secs. 4974-5015 relate to the office of county school superintendent.

Sec. 4975 requires that

> "The superintendent-elect shall qualify on or before the first Monday in August, by taking an oath to support the constitution of the United States and of the state of Oregon, and to faithfully discharge the duties required of him by this act; said oath shall be reduced to writing, subscribed to, and placed on file in the county clerk's office of his county. (L. 1899, p. 216, §16, B. & C. §3356; L. O. L. §3961.)"

Sec. 5032, relating to the duties of boards of school directors in certain districts, includes thereunder, the duty—

> "(4) To provide courses of studies for young men and women as a preparation for citizenship and devise methods of organizing the youth into voluntary, co-operative and constructive forms of patriotic service.

(5) To promote closer co-operation between the school and the home, between parents and teachers; to aim to improve the school equipment; to secure more adequate support and better housing conditions for teachers; to endeavor to provide ways and means or to remove such obstacles as may be necessary to enable all children to remain in school until they have finished the grammar grades."

Secs. 5036-5099 relate to the district school boards generally. Sec. 5040 confers upon them the power to hire teachers. Sec. 5042 provides that teachers so employed must hold valid permits or certificates.

Sec. 5058 provides that "A district school board may at its discretion permit a schoolhouse, when not occupied for school purposes, to be used under careful restriction for any proper purpose, giving equal rights and privileges to all religious denominations or political parties, but for any such use or privilege it shall not be at the cost for fuel or otherwise to the district."

Sec. 5073 provides:

"That the boards of directors in the several school districts of this state shall procure a United States flag of suitable size and shall cause said flag to be displayed upon or near each public school building during school hours, except in unsuitable weather, and at such other times as to said board may seem proper. (L. 1907, c. 37, §1; L. O. L. §4057.)"

Secs. 5100-5112 provide for compulsory part-time schools, for children who have entered employment. Sec. 5102 provides

"All children between the ages of sixteen and eighteen years must be in school or legally employed. If employed, they must attend the part time schools herein provided not less than five hours per week or one hundred and eighty hours per year, unless they have already acquired the ordinary branches of learning taught in the first

eight years of the public schools, or are attending an evening school for an equivalent time. (L. 1919, c. 324, §3.)"

Sec. 5109 provides:

"Every parent, guardian or other person in the state of Oregon having control of any child or children between the ages of sixteen and eighteen (years) who has not already acquired the ordinary branches of learning taught in the first eight grades of the public schools, shall be required to send such child or children to a part time school or class, whenever there shall have been such part time school or class established in the district where the child or children reside or may be employed. (L. 1919, c. 324, § 10.)"

Secs. 5215-5222 deal with parental or correctional schools, and sec. 5215 provides that—

"(c) No religious instruction shall be given in such school or schools; but the school board shall make suitable regulation so that the inmates may receive religious training in accordance with the belief of the parents of such children by allowing attendance at public service elsewhere. (L. 1917, c. 242, §1.)"

Secs. 5255-5258 relate to the duties of teachers. Sec. 5255 (3) includes thereunder the duty—

"To labor during school hours to advance the pupils in their studies; to create in their minds a desire for knowledge, principle, morality, politeness, cleanliness and the preservation of physical health. . . ."

Sec. 5259 provides:

"Every parent, guardian or other person in the state of Oregon having control or charge of any child, or children between and including the ages of nine and fifteen years of age, shall be required to send such child, or children, to the public schools for a term or period of not less or

more than the number of months of public school held annually in the district in which such parent, guardian or other person in parental relation may reside; provided, that in the following cases, children shall not be required to attend public schools:

(a) Children Being Taught in Private School. *Any child, or children, who is, or are, being taught for a like period of time in a private or parochial school, such branches as are usually taught in the first eight years in the public schools,* or has, or have, already acquired the ordinary branches of learning taught in such schools, the fact of which acquisition of such ordinary branches of learning by such child, or children, shall be determined by the school board in charge of the public school in such district. . . ."

Sec. 5270 provides for compulsory attendance of blind children, and deaf-mutes, at public institutions.

Secs. 5369-5376 provide for similar compulsory attendance, in certain cases, of United States government schools. Sec. 5369 provides:

"Whenever the government of the United States erects, or causes to be erected and maintained, a school for general educational purposes within the state of Oregon, and the expense of the tuition, lodging, food, and clothing of the pupils therein is borne by the United States, it shall be compulsory on the part of every parent, guardian, or other person in the state of Oregon, having control of a child or children between the ages of six and eighteen years, eligible to attend said school, to send such child or children to said school for a period of nine months in each year, or during the annual term, unless such child or children is or are excused from such attendance by the county court of said county in which said child or children reside, upon it being shown to the satisfaction of said county court that the bodily or mental condition of such child or children has been and is such as to prevent his, her, or their attendance at

school or application at study for the period required, *or that such child or children is or are taught in* the public schools, *private schools, or other school,* or at home, *in such branches as are usually taught in the public schools;* provided, that in case the government of the United States does not make provision for the free transportation of said child or children to and from their homes to said school, then he, she, or they shall not be liable to the provision of this act, unless they reside less than ten miles from such school. (L. 1905, c. 202, §1; L. O. L. §4338.)"

Sec. 5477 provides for the appropriation of public funds to private charitable institutions caring for orphans and homeless children. Sec. 5479 provides:

"The state board of health is hereby given visitatorial powers over all institutions which receive state aid under this act; and each such institution shall, on or before the fifteenth day of January of each year file with the secretary of the state board of health a financial and statistical report and statement for the preceding calendar year in such form as may be prescribed by said state board of health; and each such institution shall submit to and abide by any reasonable health and sanitary rules and regulations that may be prescribed by said state board of health; and if any such institution fails to comply with any of the provisions of this section said state board of health shall notify the secretary of state of such refusal, and such institution shall not thereafter be entitled to any benefits or payments under this act until such failure has ceased. (L. 1913, c 300, §3.)"

OREGON LAWS AFTER 1919.

CH. 115, GENERAL LAWS, 1921, p. 226.

Be It Enacted by the People of the State of Oregon:

Section 1. Any person entering into a contract to teach in the public schools of the state shall, as a part of the contract, subscribe to the following oath or affirmation:

'I solemnly swear, or affirm, that I will support the constitution of the state of Oregon . . . and the laws enacted thereunder, and that I will teach, by precept and example, respect for the flags of the United States and of the state of Oregon; . . . reverence for law and order and undivided allegiance to the government of our country, the United States of America.'

The said oath or affirmation, duly signed, shall be filed in the office of the examiner issuing the certificate and a copy shall be given to the applicant making the oath and affirmation.

Section 2. Every teacher now or hereafter employed in a private or parochial school or in any academy, college, university or other institution or (of) learning in this state shall, before entering upon the discharge of his or her duties, take the same oath or affirmation of allegiance as that prescribed for public school teachers in section 1. Such oath or affirmation shall be taken and subscribed to before some officer authorized by the state to administer oaths, and a copy of the oath or affirmation shall be filed with the officer or board in charge of such private or parochial school or other institution of learning.

The above requirements shall not apply to exchange professors or teachers whose term of service is temporary, and who do not become permanent residents of the United States.

Section 3. Whoever being in charge of any public, private or parochial school, or any academy, college, university or other institution of learning shall allow or permit any teacher to enter upon the discharge of his duties, or to give instruction therein unless such teacher shall have taken and subscribed to the oath or affirmation of allegiance provided for in sections 1 and 2, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than $100.

CH. GENERAL LAWS, 1923, p. 9.*

AN ACT to amend section 5259, Oregon Laws.

Be it enacted by the People of the State of Oregon:

Section 1. That section 5259, Oregon Laws be and the same is hereby amended so as to read as follows:

Section 5259. *Children Between the Ages of Eight and Sixteen Years*—Any parent, guardian or other person in the State of Oregon, having control or charge or custody of a child under the age of sixteen years and of the age of eight years or over at the commencement of a term of public school of the district in which said child resides, who shall fail or neglect or refuse to send such child to a public school for the period of time a public school shall be held during the current year in said district, shall be guilty of a misdemeanor and each day's failure to send such child to a public school shall constitute a separate offense; provided, that in the following cases, children shall not be required to attend public schools.

(a) *Children Physically Unable*—Any child who is abnormal, subnormal, or physically unable to attend school.

(b) *Children Who Have Completed the Eighth Grade*—Any child who has completed the eighth grade, in accordance with the provisions of the state course of study.

(c) *Distance from School*—Children between the ages of eight and ten years, inclusive, whose place of residence is more than one and one-half miles, and children over ten years of age whose place of residence is more than three miles, by the nearest traveled road from a public school; provided, however, that if transportation to and from school is furnished by the school district, this exemption shall not apply.

(d) *Private Instruction*—Any child who is being taught for a like period of time by the parent or private

* This is the initiative measure enacted November 7, 1922, printed *infra*, p. 22, but not re-enacted by legislature.

teacher such subjects as are usually taught in the first eight years in the public school, but before such child can be taught by a parent or a private teacher, such parent or private teacher must receive written permission from the county superintendent, and such permission shall not extend longer than the end of the current school year. Such child must report to the county school superintendent or some person designated by him at least once every three months and take an examination in the work covered. If, after such examination, the county superintendent shall determine that such child is not being properly taught, then the county superintendent shall order the parent, guardian, or other person, to send such child to the public school the remainder of the school year.

If any parent, guardian or other person having control or charge or custody of any child between the ages of eight and sixteen years, shall fail to comply with any provision of this section, he shall be guilty of a misdemeanor, and shall, on conviction thereof, be subject to a fine of not less than $5.00, nor more than $100, or to imprisonment in the county jail not less than two nor more than thirty days or by both such fine and imprisonment in the discretion of the court.

This Act shall take effect and be and remain in force from and after the first day of September, 1926.

CH. 7, GEN. LAWS, 1923, p. 17.

AN ACT to require the teaching of the Constitution of the United States in the public and private schools of the state of Oregon.

Section 1. In all public and private schools located within the state of Oregon, commencing with the school year next ensuing after the passage of this act, there shall be given regular courses of instruction in the constitution of the United States.

Section 2. Such instruction in the constitution of the United States shall begin not later than the opening of the eighth grade, and shall continue in the high school course and in courses in state colleges, universities and the educational departments of state and municipal institutions to an extent to be determined by the superintendent of public instruction.

OFFICIAL PAMPHLET DISTRIBUTED AMONG VOTERS PRIOR TO ELECTION NOVEMBER 7, 1922.

Proposed

CONSTITUTIONAL AMENDMENTS AND MEASURES

(With Arguments)

to be submitted to the Voters of Oregon

at the

GENERAL ELECTION

Tuesday, November 7, 1922

Published by authority

Compiled by
Sam A. Kozer
Secretary of State

LAW AUTHORIZING THIS PUBLICATION

(Section 4103, Oregon Laws)

MEASURES AND ARGUMENTS TO BE PRINTED AND DISTRIBUTED

Not later than the ninetieth day before any regular general election * * * at which any proposed law, part of an act or amendment to the constitution is to be submitted to the people, the secretary of state shall cause to be printed in pamphlet form a true copy of the title and text of each measure to be submitted, with the number and form in which the ballot title thereof will be printed on the official ballot. The person, committee or duly organized officers of any organization filing any petition for the initiative, but no other person or organization, shall have the right to file with the secretary of state for printing and distribution any argument advocating such

measure; said argument shall be filed not later than the one hundred and fifteenth day before the regular election at which the measure is to be voted upon. Any person, committee or organization may file with the secretary of state, for printing and distribution, any arguments they may desire, opposing any measure, not later than the one hundred and fifth day immediately preceding such election. Arguments advocating or opposing any measure referred to the people by the legislative assembly, or by referendum petition, at a regular general election, shall be governed by the same rules as to time, but may be filed with the secretary of state by any person, committee or organization. * * * The secretary of state shall cause one copy of each of said arguments to be bound in the pamphlet copy of the measures to be submitted as herein provided, and all such measures and arguments to be submitted at one election shall be bound together in a single pamphlet. All the printing shall be done by the state, and the pages of said pamphlet shall be numbered consecutively from one to the end. The pages of said pamphlet shall be six by nine inches in size and the printed matter therein shall be set in six-point Roman-faced solid type on not to exceed seven-point body, in two columns of thirteen ems in width each to the page with six-point dividing rule and with appropriate heads and printed on a good quality of book paper twenty-five by thirty-eight inches weighing not more than fifty pounds to the ream. The title page of every measure bound in said pamphlet shall show its ballot title and ballot number. The title page of each argument shall show the measure or measures it favors or opposes and by what persons or organization it is issued. * * * Not later than the fifty-fifth day before the regular general election at which such measures are to be voted upon the secretary of state shall transmit by mail, with postage fully prepaid, to every voter in the state whose address he may have, one copy of such pamphlet.

NOTE.—For the convenience of the voters, a list of the official ballot titles and numbers of the Proposed Constitutional Amendments and Measures is printed on pages 46, 47 of this pamphlet. This list is intended for their use, if desired, in preparing marked lists in advance in order to aid them in the final marking of their ballots at the polls.

Sam A. Kozer
Secretary of State

(On Official Ballot, Nos. 314 and 315)

A MEASURE

To amend section 5259, Oregon Laws, relating to compulsory education, to be submitted to the legal electors of the state of Oregon for their approval or rejection at the regular general election to be held November 7, 1922; proposed by initiative petition filed in the office of the secretary of state of the state of Oregon July 6, 1922.

The following is the form and number in which the proposed measure will be printed on the official ballot:

Initiative Bill—Proposed by Initiative Petition

Initiated by Ira B. Sturges, Baker, Oregon; Dr. Robert C. Ellsworth, Pendleton, Oregon; Harold Baldwin, Prineville, Oregon; W. B. Daggett, Redmond, Oregon; Lewis H. Irving, Madras, Oregon; Colin E. Davis, The Dalles, Oregon; Leslie G. Johnson, Marshfield, Oregon; C. A. Swope, Grants Pass, Oregon; W. F. Harris, Roseburg, Oregon; John R. Penland, Albany, Oregon; J. R. Jeffery, Seaside, Oregon; F. C. Holibaugh, St. Helens, Oregon; O. O. Hodson, McMinnville, Oregon; E. L. Johnson, Hillsboro, Oregon—COMPULSORY EDUCATION BILL—Purpose: Requiring any parent, guardian or other person having control, charge or custody of a child over eight and under sixteen years of age, from and after September 1, 1926, to send such child to a public school during the entire school year, excepting: (a) children physically unable; (b) children who have completed the eighth grade; (c) children between the ages of eight and ten living more than one and one-half miles, and children over ten years of age living more than three miles from a public school, except when transportation is furnished; (d) children taught by parent or private teacher.

Vote YES or No.

314 Yes	315 No

A BILL FOR AN ACT TO PROPOSE BY INITIATIVE PETITION TO AMEND SECTION 5259, OREGON LAWS.—COMPULSORY EDUCATION.

Be It Enacted by the People of the State of Oregon:

Section 1. That section 5259, Oregon Laws be, and the same is hereby, amended so as to read as follows:

Sec. 5259. *Children Between the Ages of Eight and Sixteen Years.* Any parent, guardian or other person in the state of Oregon, having control or charge or custody of a child under the age of sixteen years and of the age of eight years or over at the commencement of a term of public school of the district in which said child resides, who shall fail or neglect or refuse to send such child to a public school for the period of time a public school shall be held during the current year in said district, shall be guilty of a misdemeanor and each day's failure to send such child to a public school shall constitute a separate offense. Provided, that in the following cases, children shall not be required to attend public schools.

(a) *Children Physically Unable.* Any child who is abnormal, subnormal or physically unable to attend school.

(b) *Children Who Have Completed the Eighth Grade.* Any child who has completed the eighth grade, in accordance with the provisions of the state course of study.

(c) *Distance from School.* Children between the ages of eight and ten years inclusive, whose place of residence is more than one and one-half mile, and children over ten years of age whose place of residence is more than three miles, by the nearest traveled road, from a public school; provided, however, that if transportation to and from school is furnished by the school district, this exemption shall not apply.

(d) *Private Instruction.* Any child who is being taught for a like period of time by the parent or private teacher such subjects as are usually taught in the first eight years in the public school, but before such child can

be taught by a parent or a private teacher, such parent or private teacher must receive written permission from the county superintendent, and such permission shall not extend longer than the end of the current school year. Such child must report to the county school superintendent or some person designated by him at least once every three months and take an examination in the work covered. If, after such examination the county superintendent shall determine that such child is not being properly taught, then the county superintendent shall order the parent, guardian, or other person, to send such child to the public school the remainder of the school year.

If any parent, guardian or other person having control or charge or custody of any child between the age of eight and sixteen years, shall fail to comply with any provision of this section, he shall be guilty of a misdemeanor, and shall, on conviction thereof, be subject to a fine of not less than $5, nor more than $100, or to imprisonment in the county jail not less than two nor more than thirty days, or by both such fine and imprisonment in the discretion of the court.

This act shall take effect and be and remain in force from and after the first day of September, 1926.

For affirmative argument see pages 24-25.
For negative arguments see pages 26-43.

(On Official Ballot, Nos. 314 and 315)

ARGUMENT (Affirmative)

Submitted by H. Baldwin, W. B. Daggett, Collin E. Davis, W. F. Harris, O. O. Hodson, F. C. Holibaugh, J. R. Jeffery, E. L. Johnson, Leslie G. Johnson, John R. Penland, Ira B. Sturges, in behalf of the COMPULSORY EDUCATION BILL.

Do you believe in our public schools?

Do you believe they should have our full, complete and loyal support?

What is the purpose of our public schools, and why should we tax ourselves for their support?

Because they are the creators of true citizens by common education, which teaches those ideals and standards upon which our government rests.

Our nation supports the public school for the sole purpose of self-preservation.

The assimilation and education of our foreign born citizens in the principles of our government, the hopes and inspiration of our people, are best secured by and through attendance of all children in our public schools.

We must now halt those coming to our country from forming groups, establishing schools, and thereby bringing up their children in an environment often antagonistic to the principles of our government.

Mix the children of the foreign born with the native born, and the rich with the poor. Mix those with prejudices in the public school melting pot for a few years while their minds are plastic, and finally bring out the finished product—a true American.

The permanency of this nation rests in the education of its youth in our public schools, where they will be correctly instructed in the history of our country and the aims of our government, and in those fundamental principles of freedom and democracy, reverence and righteousness, where all shall stand upon one common level.

When every parent in our land has a child in our public school, then and only then will there be united interest in the growth and higher efficiency of our public schools.

Our children must not under any pretext, be it based upon money, creed or social status, be divided into an-

tagonistic groups, there to absorb the narrow views of life as they are taught. If they are so divided, we will find our citizenship composed and made up of cliques, cults and factions each striving, not for the good of the whole, but for the supremacy of themselves. A divided school can no more succeed than a divided nation.

The inspiration for this act is the following resolution:

"*Resolved,* That we recognize and proclaim our belief in the free and compulsory education of the children of our nation in public primary schools supported by public taxation, upon which all children shall attend and be instructed in the English language only without regard to race or creed as the only sure foundation for the perpetuation and preservation of our free institutions, guaranteed by the constitution of the United States, and we pledge the efforts of the membership of the order to promote by all lawful means the organization, extension and development to the highest degree of such schools, and to oppose the efforts of any and all who seek to limit, curtail, hinder or destroy the public school system of our land."

The above resolution was adopted by the Supreme Council, A. & S. Rite, for the Southern Jurisdiction of the United States, May, 1920.

Grand Lodge of Oregon, A. F. & A. M., June, 1920.

Imperial Council, A. A. O. Nobles Mystic Shrine, June, 1920.

Respectfully submitted,

H. Baldwin, Prineville, Oregon
W. B. Daggett, Redmond, Oregon
Collin E. Davis, The Dalles, Oregon
W. F. Harris, Roseburg, Oregon
O. O. Hodson, McMinnville, Oregon
F. C. Holibaugh, St. Helens, Oregon
J. R. Jeffery, Seaside, Oregon
E. L. Johnson, Hillsboro, Oregon
Leslie G. Johnson, Marshfield, Oregon
John R. Penland, Albany, Oregon
Ira B. Sturges, Baker, Oregon.

(On Official Ballot, Nos. 314 and 315)

ARGUMENT (Negative)

Submitted by the Oregon and Washington District of the Evangelical Lutheran Synod of Missouri, Ohio and other states, opposing the COMPULSORY EDUCATION BILL.

This bill if enacted into law would be

A Terrific Blow to Personal Liberty

Who owns your child? The state? Do not you? Who feeds and clothes your child? The state? Not while you are living and able to care for your own. *Why* do you feed and clothe your child? Because it is *your* child. If you don't own your own child, what in the wide world do you own?

Now if you own your child and are in duty bound to feed and clothe it, you certainly have "some say" about your child's education and its teacher. The state has a right to compel you to educate your child, just as it has a right to compel you to feed and clothe your child. But the state has no more right to choose the teacher for your child and the school it shall attend than it has to tell you where to buy your child's clothing and what style of clothing it must wear.

This bill, if enacted into law, will deal *a terrific blow to your constitutional rights, confiscate your parental authority, and undermine your personal liberty.*

It will also

Seriously Curtail Your Religious Liberty

Under the constitution of the United States and of the state of Oregon you enjoy religious liberty; that is, the liberty to worship God according to the dictates of your conscience and to rear your child according to your religion. If you see fit to send your child to a school in which the religion of your choice is taught, not one day in the week, but every day, and the whole training of the child is permeated by such religion, the state, under the constitution, *must not prohibit you from doing so.* This bill, if enacted into law, will prohibit you from doing so.

This bill is manifestly unconstitutional.

President Harding Warns

"In my experience of a year in the White House there has come to me no other such unwelcome impression as the manifest *religious* intolerance which exists among many of our citizens. I hold it to be a menace to the very liberties we boast and cherish."

Ex-Vice-President Marshall Says

"I have an old-fashioned notion that in a government where freedom of religion is guaranteed to the citizen, as the father of a child, I have a right to train it along the lines of my own religious belief.

"I doubt that any officer, however gifted and high-minded he may be, can have a tenderer regard for my child than I myself possess, that he can more sincerely desire his health, happiness and success.

"Unless I develop into such a brute as to be unfit to take care of my child and thus warrant society in removing him permanently from my custody, I should be let alone to look after his health, care for his wants, guide his education and instil into his mind such religious views as I think will enable him to stand against the temptations of a tempestuous world."

The state has a right to set a certain standard of education, to prescribe a certain course of studies, one that will qualify your child for intelligent citizenship. *But where the child shall get* this education, in a free land such as ours, it is not for the state to say. If parents see fit to send their children to schools where these just requirements of the state are met and the children get a religious training besides, the state must not interfere.

Would Send Taxes Still Higher

There are some 12,000 children in private and denominational schools in the state of Oregon. If these children were forced into the public schools some 300 to 400 additional teachers and a corresponding number of additional schools would have to be provided and financed. The already burdensome tax rate would thus soar still higher. And who would have to pay the bill? YOU.

Let Common Sense Decide

We make our appeal to the common sense of every thinking American. And we ask that the professional agitator be made to turn to more worthy tasks. We ask that he be prevented from infringing upon the *natural and inalienable* right of parents to provide their children with a religious education that satisfies their ideals and their consciences. We ask every good citizen to declare again that the constitutional bill of rights, which has stood the tests of generations, *should be left as it is.*

In spite of religious, social, economic and many other differences we have managed to live together in peace and harmony for many years. For this blessing we are indebted largely to our forefathers, who contented themselves with bringing together the people of many creeds and differences upon a broad but sound platform, built of natural and consequently inalienable rights. *Let this their basic principle of civil government be sacred to us. Let us keep faith with them. Let us repel such as would drive a splitting wedge between us by proposing an abridgement of parental rights, of religious liberty and of educational freedom.*

THE OREGON AND WASHINGTON DISTRICT
OF THE EVANGELICAL LUTHERAN SYNOD
OF MISSOURI, OHIO AND OTHER STATES,
By J. A. RIMBACH,
Chairman of Committee.

(On Official Ballot, Nos. 314 and 315)

ARGUMENT (Negative)

Submitted by W. M. Ladd, J. C. Ainsworth, C. D. Bruun, F. L. Shull, Charles H. Carey, E. C. Sammons, E. C. Shevlin, Chas. J. Gray, Wm. D. Wheelwright, Richard W. Montague, C. F. Adams, W. B. Ayer, and James B. Kerr, of Portland, Oregon, opposing the COMPULSORY EDUCATION BILL.

1. Denial of Right.

This measure would deny to parents the right to choose the school, the teacher, the methods, by means of which their children are to be educated; a right fundamental in any country which pretends to be free.

2. Prussian System.

This measure imitates the method of public education which brought Prussia to her deserved destruction—giving the state dictatorial powers over the training of children and destroying independence of character and freedom of thought.

3. The Method of Bolshevist Russia.

In present day Russia the Bolshevist government treats the child as the ward of the state. This measure proposes to adopt this method and to substitute state control for the authority and guidance of the parents and is destructive of American independence.

4. Overcrowding Schools and Increased Taxes.

We, in Oregon, are justly proud of our school system but we have already felt the burden of taxes necessary for its support. If the number of children now attending the public schools is to be increased by adding those now taught in private schools it is inevitable that overcrowding must result, and it is also certain that taxes must be materially increased or that the present standards of instruction must be materially lowered.

5. Do We Favor Blue Laws?

If the state can require all children to receive only the instruction prescribed by public school directors what

is to prevent the state from forcing upon all its citizens a particular religious creed, from requiring all its citizens to receive treatment from state physicians or from enforcing the Puritan Sunday and a code of Blue Laws?

6. Conditions Do Not Demand This Measure.

Conditions in Oregon certainly do not call for any such drastic measure. The population is 85.1 per cent native white, and only 13 per cent foreign born white and three-fourths of the latter are naturalized. There is no crowded foreign section in any Oregon town.

7. Title of Measure is Deceptive.

This is miscalled a compulsory educational measure. Compulsory education is now required under existing law. Under the present law all children must be educated up to the standard of the common schools and the supervising officers of the public schools apply the test.

We, the undersigned, are strongly in favor of public schools and of compulsory education, but we believe that the proposed measure will injure rather than aid the cause of education and that it is destructive of true Americanism.

W. M. Ladd, Portland, Oregon.
J. C. Ainsworth, Portland, Oregon.
C. D. Bruun, Portland, Oregon.
F. L. Shull, Portland, Oregon.
Charles H. Carey, Portland, Oregon.
E. C. Sammons, Portland, Oregon.
E. C. Shevlin, Portland, Oregon.
Chas. J. Gray, Portland, Oregon.
Wm. D. Wheelwright, Portland, Oregon.
Richard W. Montague, Portland, Oregon.
C. F. Adams, Portland, Oregon.
W. B. Ayer, Portland, Oregon.
James B. Kerr, Portland, Oregon.

(On Official Ballot, Nos. 314 and 315)

ARGUMENT (Negative)

Submitted by Board of Trustees of St. Helen's Hall: Rt. Rev. Walter Taylor Sumner, D. D., Bishop of Oregon, President; Rev. John D. Rice, Vice-Chairman; A. M. Ellsworth, Secretary and Treasurer; and Rev. H. D. Chambers, W. J. Henderson, and Clarence D. Porter, opposing the COMPULSORY EDUCATION BILL.

We are opposed to proposed bill because the enactment of it will constitute an unwarranted and unjustified invasion of the civil and religious liberty of the citizens of this state. No invidious fact or condition affecting public interest has been called to our attention that would furnish in the slightest degree an excuse for the proposed legislation.

We ask all citizens to register their vote against this bill.

Respectfully submitted,

BOARD OF TRUSTEES OF ST. HELEN'S HALL,
WALTER TAYLOR SUMNER,
Bishop of Oregon, President.

REV. JOHN D. RICE,
Vice-Chairman.

A. M. ELLSWORTH,
Secretary and Treasurer.

REV. H. D. CHAMBERS,
W. J. HENDERSON,
CLARENCE D. PORTER.

(On Official Ballot, Nos. 314 and 315)

ARGUMENT (Negative)

Submitted by Ruth Catlin, Principal of Miss Catlin's School, Portland, Oregon; Addison C. Jewell, Principal of Preparatory School, Portland, Oregon; Joseph A. Hill, Principal of Hill Military Academy, Portland, Oregon, and Mrs. Calvin B. Cady, Principal of Music-Education School, Portland, Oregon, opposing the COMPULSORY EDUCATION BILL.

Do you believe in our public schools?

Every right-minded American answers, "Yes."

Do you believe they should have our full, complete and loyal support?

Again, every right-minded American answers, "Yes."

Is our full support of the public schools diminished by our support of the private schools? No, the two systems work perfectly side by side. The public schools necessarily and properly educate the vast majority, but by methods exacted by large numbers. The private schools educate comparatively few but with more attention to the individual. The ordinary branches of learning are acquired in both systems. The public schools can afford no more. The private schools by their independent position offer varied opportunities and individual development impossible or unsuitable in the public schools.

As citizens of Oregon and as principals of non-sectarian private schools we oppose the Compulsory Education Bill.

As citizens we object to the measure because it deprives parents of the right to choose the means of education for their children. We believe in the necessity and value of the public schools and in the right of the state to require the education of its children by competent teachers and according to certain scholastic standards. We are equally firm in our belief that parents have the right to choose the school in which their children shall be educated so long as the state's standards are fulfilled. The states of the Union so far have been content to compel children to attend some school either public or private where the state standards are maintained. If this

measure becomes law it will be the first attempt in this country to compel every child to attend a particular kind of school.

As principals of the schools represented we object to the proposed law as it directly affects us in the following respects:

1. It will destroy the capital invested in our schools. The total capital invested in the lands, buildings, equipment and endowment funds of the four schools is more than $250,000.00. The buildings and equipment are of little value except for private schools and the use of the endowment funds is limited to private educational purposes. Two of the schools have pupils of high school grades who are not directly affected by this bill and it may be supposed that these schools can continue with such pupils, but the withdrawal of one-half of the children and one-half the income would kill the school. Moreover, we shall have no feeling of security in conducting the high school grades, for if this bill passes there appears to be no reason why a similar attempt will not be made to destroy the higher schools.

2. It will deprive us and our teachers of the right to earn a living in a lawful occupation.

The principals and teachers of the four schools are largely college graduates who have given the best part of their adult years to teaching. As private school teachers they have been trained through an experience different from the public schools. The smaller classes in the private schools allow greater freedom of action, a less rigid discipline, more initiative and a closer relation with individual pupils than can be permitted in the public schools with their larger classes.

3. This law will destroy schools which provide desirable methods and courses of study, which the public schools have not adopted and probably never can adopt.

Our four schools meet the public school requirements as to courses of study, competency of teachers, and attainments of pupils. And because they are private schools we do more in many respects than the public schools. Our chief advantage lies in the smaller classes. While the Portland public elementary schools have one

teacher for about 40 pupils, our schools have one teacher for about 12 pupils. This means better teaching and more attention to each child's development. In the private schools far more consideration can be given to healthful conditions. Quiet, uncrowded, well ventilated rooms are provided. No one interested directly or indirectly in the public schools approves of the large classes and the over-crowding. They are endured only because of the enormous cost of curing the evil. The private schools consider the small classes essential to their success and they provide the necessary teachers only at greatly increased expense.

Our schools furnish other special inducements which in the eyes of our patrons are advantages. In the judgment of some parents co-education is not best even for young children and they prefer to send their boys to a school exclusively for boys like the Hill Military Academy and their girls to Miss Catlin's. Shall such parents be deprived of the right to exercise their judgment? Is the state injured by having such schools?

Some parents wish the discipline and training of a military school for their boys. Is the Hill Military Academy to suffer because it offers this kind of instruction under an army officer detailed by the United States government?

Each private school equals the studies of the public schools and can give special advantages in additional subjects including the arts, languages, and manual training.

The schools we represent are in Portland and some children come to us from other parts of Oregon and from other states because of our climate, the Art Museum, the Public Library and the special advantages of a large city. The time will come, unless this bill passes, when similar schools in eastern Oregon or in the Rogue River valley will prosper on account of the benefits afforded by their different climate and surroundings.

Two of our schools furnish boarding facilities and thus give an opportunity for the care as well as instruction of children who have lost a home by the death of one or both parents. Can the state undertake to give such children the care which they now receive in the private schools?

Two of our schools, by succession to older schools, have a long and useful past in the educational history of the state. The Portland Academy was founded in 1880 under the principalship of Dr. Joseph R. Wilson and Dr. S. R. Johnson. Miss Jewell was the principal and Miss Quigg a teacher in the elementary department when the academy closed in 1916 and they then started their Preparatory School. The influence of the academy in this community is manifest in the lives of its many graduates. The Bishop Scott Grammar School was founded in 1870 by the Protestant Episcopal Church. It closed as a church school in 1901 and Dr. J. W. Hill, who had been its principal, opened the Hill Military Academy, at the present location, and in 1908 Dr. Hill's son succeeded him as principal. Again we have a school with a long and useful career in education.

Miss Catlin started her school in 1912 and Mr. and Mrs. Cady the Music-Education School in 1913. Their graduates are still too young to have made the impression on the city which has come from the older schools, but each has done its work to the satisfaction of its patrons.

Finally, the bill should be defeated because:

It would deprive public school education of the benefits it receives from the experiments in methods, research work and high standards contributed by independent schools.

It is against the best American ideals of freedom in that it denies to men and women freedom of thought and action in the choice of environment and influences for their children.

It is Prussian in spirit and method and would be a piece of majority tyranny in legislation.

It represents an anti-American effort to standardize the individual and strikes a blow at democracy's long struggle to protect the individual in his right to direct his own life.

Ruth Catlin,
Principal of Miss Catlin's School.

Addison C. Jewell,
Principal of Preparatory School.

Joseph A. Hill,
Principal of Hill Military Academy.

Mrs. Calvin B. Cady,
Principal of Music-Education School.

(On Official Ballot, Nos. 314 and 315)

ARGUMENT (Negative)

Submitted by The Seventh Day Adventists of Oregon, H. G. Thurston, General Field Secretary, opposing the COMPULSORY EDUCATION BILL.

We believe in our public schools. We believe they should be supported by public taxation. We believe their highest aim is to assist in developing intelligent citizens. We believe in compulsory education. We are not at all certain, however, that a man educated in the public school is more intelligent than if he were educated in a private or sectarian school. Nor have we heard convincing argument that a person is necessarily more patriotic, if educated in a public school, than if he were educated in a school not supported by public taxation.

For its first 50 years, our country had no public schools; but the patriotism of that time cannot be questioned. If anarchy is taught by any teacher of private or public school, this can and ought to be corrected by the government. Is it proven that anarchy is bred, and hatred for the "stars and stripes" is begotten by a daily study of the gospel of Jesus Christ? Those initiating the measure are well aware that not all who have attended public schools are desirable citizens. Anarchists and criminals have, many of them, attended public schools; therefore attendance of public schools is not the infallible road to good citizenship.

We favor state inspection of all schools. We favor an educational standard for private or sectarian schools, at least equal to the standard of the public schools.

Civil governments are ordained of God to protect men in their natural rights, and, as Thomas Jefferson declared June 7, 1816, "to take none of them from us." The greatest constitution ever framed by human hand declares, "congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." U. S. Constitution Art. 1, Amendments.

Some believe it is their inalienable and constitutional right to educate their children for missionary service. To many parents this has become a religious duty and is an "exercise" of their religion, and a matter of conscience. Where the equal rights of others are respected, in America "the dictates of conscience" are held sacred. Christians believe the Master's great commission is of force today. He said, "Go ye into all the world and teach all nations"; and this work is to continue "even to the end of the world."

Seventh-day Adventists believe early training is highly essential for the greatest efficiency as missionaries. They have proven this by actual experience. In their efforts to assist in evangelizing the world, these people have established many schools.

In addition to the fundamental branches taught in the public schools, they are instructed, not only in true Americanism, but also in their duty to the heathen of all lands. They now have about 40,000 students in actual training, a large number of whom are inspired by the missionary idea. More than 1,300 teachers are conducting elementary schools. In the great world evangelization effort, they paid last year more than $8,462,000. Nor does this sum include the cost of their educational work. This was an additional sum. Oregon has become a liberal sharer in this effort. Will the noble, liberty-loving citizens of this commonwealth, by adopting this measure, help to brand this state as the first in the Union to cut short the efforts of Christian people to discharge the solemn duty which they feel they owe to men in other lands less favored than ours?

We understand the exemption noted in (d) of the measure does not include parochial or sectarian schools. They are abolished altogether. It gives almost unlimited powers to the superintendent of instruction in each county. The power granted him in this measure might be misused, and, through prejudice, become tyrannical.

Let all our children be taught in English. No sectarian school should seek or accept state aid. The public school can not and ought not to attempt to train students in religious lines. Such effort would prove a complete failure.

We are not ashamed of the product of our parochial schools when conducted by well-trained spiritual teachers. If all the children of the land could receive this same kind of spiritual food in connection with their secular education, we feel confident that our republic would have nothing to fear, and there would be very little need for policemen and jails in the future.

We have no disposition to question the sincerity of the promoters of this measure; but we see many reasons which convince us that it is un-American and unconstitutional, and will not accomplish the end sought. This measure virtually involves a union of church and state. In this case the state exercises arbitrary authority over the church as was done in the days of the old Roman Republic. Who wants a return of those cruel days? The adoption of this measure would trample upon the constitutional rights of parents.

The government that turns its citizens into subjects and makes them mere cogs in a wheel, without any rights of their own, is a government that is transforming itself into a tyranny, and is paving the way for its downfall. No government that sets itself up above the inalienable rights of its citizens, and tramples these rights into the dust by the exercise of unjust and arbitrary power, can long endure. The measure is "paternalism" on the part of the state, and a thousand evils will surely follow if it is ever enacted. It should be defeated.

THE SEVENTH DAY ADVENTISTS OF OREGON,

By H. G. Thurston,
General Field Secretary.

(On Official Ballot, Nos. 314 and 315)

ARGUMENT (Negative)

Submitted by W. H. Boddy, of Hood River, Oregon; William Moll Case, of Eugene, Oregon, and Boudinot Seeley, of Portland, Oregon, opposing the COMPULSORY EDUCATION BILL.

On July 12, 1922, a group of 25 Oregon ministers, members of the Presbyterian Church, adopted the following statement of belief:

"Whereas, much of the propaganda in favor of this bill has been conducted in the name of Protestantism, we the undersigned ministers, members of the Presbyterian Church, believe that the proposed legislation is inimical to the highest human welfare for the following reasons:

1. It proposes to abolish one system of religious education and offers no substitute for it in any plan of religious instruction in connection with the public school system.

2. It is based on the philosophy of autocracy that the child belongs primarily to the state; it is an unjustifiable invasion of family authority and threatens ultimately the guarantees of our American liberty.

3. The proposed legislation in its conception, promotion and execution violates what we conceive to be the spirit of fraternity and brotherly love taught by our Master.

At the same time we desire that it be understood that we favor the erection of standards by the state department of education for both students and teachers in all private schools."

Signers of the statement were:

William H. Boddy, pastor Community Church, Hood River, Oregon.

Boudinot Seeley, superintendent of church extension, Portland, Oregon.

Edward H. Pence, pastor Westminster Presbyterian Church, Portland, Oregon.

Ward W. McHenry, pastor Mt. Tabor Presbyterian Church, Portland, Oregon.

Arthur M. Rice, pastor, Klamath Falls, Oregon.

Allan McRea, pastor, Tillamook, Oregon.

W. Lee Gray, pastor, Rogue River, Oregon.

George T. Pratt, Wendling, Oregon.

J. E. Youel, pastor, Dallas, Oregon.

G. H. Wilbur, pastor, Milton, Oregon.

William Moll Case, pastor Central Church, Eugene, Oregon.

John J. Canoles, pastor, Lebanon, Oregon.

William Crosby Ross, pastor, LaGrande, Oregon.

Bert S. Hughes, pastor, Union, Oregon.

A. J. Hanna, pastor Marshall Street Church, Portland, Oregon.

A. R. Spearow, pastor, Cottage Grove, Oregon.

James Akin Smith, pastor Hope Church, Portland, Oregon.

Bruce J. Griffin, University pastor, Eugene, Oregon.

Joseph Y. Stewart, pastor, Whiteson, Oregon.

V. E. Schanbel, pastor, Redmond, Oregon.

Norman K. Tully, associate pastor First Presbyterian Church, Portland, Oregon.

J. E. Snyder, pastor, Corvallis, Oregon.

William E. Baskerville, pastor, Langlois, Oregon.

J. C. Mergler, pastor Vernon Presbyterian Church, Portland, Ore.

W. F. Shields, pastor, Wallowa, Oregon.

Submitted by,

W. H. Boddy,
Hood River, Oregon.
William Moll Case,
Eugene, Oregon.
Boudinot Seeley,
Portland, Oregon.

(On Official Ballot, Nos. 314 and 315)

ARGUMENT (Negative)

Submitted by the Catholic Civic Rights Association of Oregon, by J. P. Kavanaugh, Frank J. Lonergan, Dan S. Malarkey, Wm. A. Munly, Henry E. McGinn, Arthur C. Dayton, and P. J. Hanley, Executive Committee, opposing the COMPULSORY EDUCATION BILL.

What our state and country need is not discord but harmony; not division but unity. The Puritans, the Huguenots, the Cavaliers, the Quakers, the Catholics, and others, came to this country to escape religious and political persecution. They craved civil and religious liberty. The finest expression of the American spirit was the Declaration of Independence. That spirit sustained them through the hardships and privations of the Revolution. It was finally crystallized in the Constitution and Bill of Rights. Americans became a great national family. They dwelt together in peace. They fought and fell together in war to establish and sustain the government and its institutions of liberty.

Oregon has been free from racial and religious strife for a long time. It has had a long period of prosperity and social peace. Its population is largely native born. It ranks high in education. It has fewer illiterates than almost any state in the Union. It was the first state in volunteer service in the great war. This record was achieved under existing conditions and institutions. There is no occasion now for agitation that will estrange old friends and neighbors and that will divide our people into classes and factions. In the war no one was rejected on account of the school he attended or the religion he professed. No greater misfortune could befall us than movements calculated to create divisions.

A heavy burden is laid upon the parents of this generation by the present social conditions. Their children are in their keeping. It is their right and their duty to train and discipline their children so that they will become useful and loyal citizens. The right of the parent to select the mental and moral training of the child is fundamental and inalienable. It is the most primary

right recognized by enlightened countries. That right cannot be invaded without violating the constitutional guarantees. This right has been recognized in this country from the beginning. For more than 140 years these private schools have been maintained and they exist in every state of the Union. They are thoroughly efficient in every department of instruction. They carry the same course of study as the public schools, and these courses are supervised by the superintendent of public instruction. Their students pass the state examinations when they complete the primary grades. Their uniform high standing in these examinations attests the quality of their instruction. There has never been a law of this kind enacted in this country. It was proposed in Michigan at the last election and decisively defeated at the polls. It failed to secure sufficient signatures in Michigan this year to again place it on the ballot.

Many of the leading public men of the country, including Theodore Roosevelt, Woodrow Wilson, Henry Cabot Lodge, Oscar Underwood and others, received their instruction in private institutions. Mr. Philander Claxton, until recently U. S. Commissioner of Education, declared in a public address: "I believe in the public school system. It has been the salvation of our democracy, but the private schools and colleges have been the salvation of our public schools. These private institutions have their place in our educational system; they prevent it from becoming autocratic and arbitrary and encourage its growth along new lines." Thomas Jefferson was emphatic in his praise of private elementary schools of his day.

All of the private schools give instruction in civics and American history, and patriotic exercises, at least equal in amount to such courses in the public schools, and with text books approved by the department of public instruction. No foreign language is used as a medium of instruction; all use English. Few of the students attending private schools are children of foreign born parents. The vast majority of the children of foreign born parentage in Oregon attend the public schools.

Oregon requires immigration for its development. California has 22 persons to the square mile, Washington

has 20, and Oregon has but 8 and a fraction to the square mile. Immigration is not attracted by freak legislation, and many at whom measures of this kind are aimed will prefer to live in other states where a more liberal spirit prevails.

Under the terms of this measure the county superintendent is charged with the tremendous task and responsibility of granting permits to individual parents to engage private instructors for their children. Out of the thousands of applications that will be made, the superintendent may, of his own volition, grant permission to some and refuse others. The imposition of this task will make that office odious and subject the superintendent to the charge of favoritism. This is a delegation of final authority to an official that is out of harmony with the spirit of our institutions.

There is a compulsory educational law in force in Oregon now. Every normal child must attend school in the primary grades. The title of this bill is intended to mislead in that respect. The proposers of this measure have tried to create the impression that there is an attack upon the public schools. There is not the slightest antagonism to the public schools from any source.

The proposers are the aggressors, and have forced this issue upon the public. Persons who arouse racial or religious prejudices as a means of securing place or power will not be convinced by any showing, but the broad, liberal-minded American wants to know the facts. He will realize that this measure will create a tremendous burden of taxation, and that it is an invasion of fundamental rights guaranteed in terms by the Constitution of Oregon.

CATHOLIC CIVIC RIGHTS ASSOCIATION
OF OREGON,

By J. P. Kavanaugh,
Frank J. Lonergan,
Dan J. Malarkey,
Wm. A. Munly,
Henry E. McGinn,
Arthur C. Dayton,
P. J. Hanley.

Resolution of General Convention of Protestant Episcopal Church.

At the General Convention of the Protestant Episcopal Church in the United States of America held in the City of Portland, Oregon, on September 19, 1922, the following resolution was adopted during the pendency of the agitation for the enactment by Initiative Petition of the Oregon Compulsory Public School Law now before the court:

> "Whereas, there has been introduced into the Congress of the United States a bill to regulate further the Public School system of the nation; and
>
> "Whereas, Legislation has also been attempted in different parts of the country, which, if successful, will have the effect of eliminating all schools under the direction of the Church, and all other private schools giving education through the elementary grades; and
>
> "Whereas, We desire to express our approval of the Public School system in our land and our sympathy with all well considered efforts to develop and improve the public schools; and
>
> "Whereas, We also believe that the English Language should be the sole medium of instruction in all our Public Schools; therefore be it
>
> "Resolved, the House of Bishops concurring, that the General Convention expresses its abiding conviction that instruction in religion is an essential element in all true education, and that Church Schools have an indispensable part in our educational system; and be it
>
> "Further Resolved, the House of Bishops concurring, that this General Convention goes on record as deprecating and opposing any and all movements seeking to secure legislation having as its natural result the injury and perhaps the destruction, of the Church schools of our land."

On November 7, 1924, this Society through the National Council, acting as its board of directors, adopted the following resolution:

> "RESOLVED, That the National Council places itself on record as being against the Oregon Compulsory School Bill.
>
> "RESOLVED, That the matter of properly representing the National Council in the litigation relative to the Oregon Compulsory School Law now before the United States Supreme Court be referred to Mr. Hotchkiss with full power."

REMARKS BY ELIHU ROOT AT MASS MEETING IN MADISON SQUARE GARDEN, SUNDAY, JANUARY 18, 1925, IN SUPPORT OF MOVEMENT TO COMPLETE PROTESTANT EPISCOPAL CATHEDRAL OF ST. JOHN THE DIVINE IN THE CITY OF NEW YORK.

We are here to make open demonstration in behalf of a public expression of faith. We represent widely differing opinions upon religious questions, but we are not here to promote any one of them. We see about us a world in which attention is engrossed by controversy regarding material things and non-essential differences of opinion and the personal conflicts which arise from prejudice and passion. Meantime the more vital truths of the spirit, upon which we are all willing to agree, tend to be forgotten. Assent to them grows more mild and indifferent. Spiritual forces tend to exercise less control over the conduct of life. Spiritual values tend to weigh less in determining ambition and aspiration.

The rulers of the greatest of European nations have proclaimed Atheism as the doctrine of the state and are urging it upon their millions of people with a vast propaganda. In our own country which has so many just and kindly people, so many humane and charitable people, under reaction from the exaltation and sacrifice of the war time, materialism grows strong.

A nation cannot live without nobler ideals than mere material prosperity. Its people must have beliefs. They must have aims beyond mere security or comfort or luxury. Without faith a nation is sure to die.

There is need for reaffirmation of the vital truth that there is a spiritual life, something more than wealth and luxury, more than leisure and comfort, more than anything that money can buy.

It is not enough that a truth be declared and then left to be taken for granted. Men forget. Things visible and tangible occupy the field of thought. New generations occupy the earth. Truth must be continually redeclared and kept in the mind if it is to be maintained as a living force. Words are feeble instruments to affect the human mind and heart. The millions of words which every year

are spoken and written and printed are mostly futile. Modern sophistication adds to the difficulty. Such a vast multitude of ideas are urged by the voice and exploited in print that novelty has disappeared and indifference closes the mind. Now and then some powerful personality impresses itself for a brief time and within a narrow circle. At long intervals the inspiration of some great example attracts a following, or the beauty and pathos of some conspicuous sacrifice compels sympathy; but these are soon forgotten.

There remains one form of expression in which even we in our common work-a-day life can unite which will kindle the imagination and will move the heart and uplift the spirit of countless thousands for centuries to come. It is the form through which the faith of the 13th century expressed itself in the great cathedrals which testified to a belief in spiritual life and in the presence of which now, centuries after, all that is small and mean is subdued by all that is reverent and noble in the beholder's nature.

Through the miracle of art at its noblest, we can build here a great cathedral which shall testify that the faith of America is not dead, which shall be a memorial of all the saints and martyrs and heroes of the spiritual life of the world, which shall impress upon the millions who enter it lessons of reverence and faith, and which, as it towers over this great city of wealth at the gateway of the new world, will carry to all who see it from afar, a perpetual declaration that above the material life there is a spiritual life, above the temporal there is the eternal.

ACT OF CONGRESS OF FEBRUARY 4, 1925.

(PUBLIC—No. 361—68TH CONGRESS)
(S. 2842)

AN ACT to provide for compulsory school attendance, for the taking of a school census in the District of Columbia, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

ARTICLE I.—COMPULSORY SCHOOL ATTENDANCE.

SECTION 1. Every parent, guardian, or other person residing permanently or temporarily in the District of Columbia who has custody or control of a child between the ages of seven and sixteen years shall cause said child to be regularly instructed in a public school or in a private or parochial school or instructed privately during the period of each year in which the public schools of the District of Columbia are in session: *Provided,* That instruction given in such private or parochial school, or privately, is deemed equivalent by the Board of Education to the instruction given in the public schools.

SEC. 2. Any child between the ages of fourteen and sixteen years who has completed satisfactorily the eighth-grade course of study prescribed for the public elementary schools of the District of Columbia, or a course of study deemed by the Board of Education equivalent thereto, may be excused by the superintendent of schools from further attendance at school under the provisions of this Act, provided he is actually, lawfully, and regularly employed.

SEC. 3. The Board of Education of the District of Columbia may issue a certificate excusing from attendance at school a child who, upon examination ordered by such board, is found to be unable mentally or physically to profit from attendance at school: *Provided, however,* That if such examination shows that such child may benefit from specialized instruction adapted to his needs, he shall attend upon such instruction.

SEC. 4. The Board of Education shall define in its rules and regulations valid excuses for absence from school, and the absence of a child between the ages of seven and sixteen years for any reason other than so defined as valid shall be unlawful.

SEC. 5. An accurate daily record of the attendance of all children between the ages of seven and sixteen years shall be kept by the teachers of every public, private, or parochial school and by every teacher giving instruction privately. Such record shall at all times be open to the school-attendance officers or other persons authorized to enforce this Act, who may inspect and copy the same.

SEC. 6. It shall be the duty of every principal or head teacher of every public, private, or parochial school, or private teacher to report to the department of school attendance and work permits the name and address of any child between the ages of seven and sixteen years enrolled in his school whenever such child has been absent from school two day sessions or four one-half day sessions or more in any school month, together with the reason for such absence as far as known.

SEC. 7. The parent, guardian, or other person residing permanently or temporarily in the District of Columbia and having charge or control of any child between the ages of seven and sixteen years who is unlawfully absent from public or private school or private instruction shall be guilty of a misdemeanor, and upon conviction of failure to keep such child regularly in public or private school or to cause it to be regularly instructed in private, shall be punished by a fine of $10 or by commitment to jail for five days, or by both, at the discretion of the court: *Provided,* That each two days such child remains away from school unlawfully shall constitute a separate offense: *Provided further,* That upon conviction of the first offense, sentence may, upon payment of costs, be suspended and the defendant placed on probation.

ARTICLE II.—SCHOOL CENSUS.

SECTION 1. That it shall be the duty of the director of school attendance and work permits, under instruction

of the superintendent of schools, approved by the Board of Education, to cause to be made a complete census of all children between the ages of three and eighteen years permanently or temporarily residing in the District of Columbia, and annually thereafter or as frequently as may be found necessary or desirable. Such census shall be amended from day to day as changes of residence occur among children within the ages prescribed in this Act, and as other persons come within the ages prescribed, and as other persons within such ages shall become residents of the District. The record of such enumeration of children shall give the full name, address, race, sex, and date and place of birth of every such child, the school attended by him, and if the child is not at school the name and address of his employer, if any, and the name, address, and occupation of the parents or guardian.

SEC. 2. It shall be the duty of the principal or head teacher of every public, private, or parochial school or private teacher, in accordance with the rules adopted by the Board of Education, to report to the director of the department of school attendance and work permits the name, address, sex, age, and race of every child under eighteen years of age residing permanently or temporarily in the District of Columbia who enrolls in or withdraws from his school.

SEC. 3. Any parent, guardian, custodian, principal, or teacher of a child between the ages of three and eighteen who willfully neglects or refuses to provide the information required by this Act, or who knowingly makes any false or untrue statement, shall be guilty of a misdemeanor and on conviction shall be punished by a fine of $10 or by commitment to jail for five days, or by both, at the discretion of the court.

ARTICLE III.—ADMINISTRATION.

SECTION 1. The Board of Education is hereby authorized to consolidate the administrative duties incident to the enforcement of the provisions of this Act and of the Act to regulate child labor under a single division to be known as the department of school attendance and work permits.

SEC. 2. The Board of Education is hereby authorized, empowered, and directed to appoint a director of said department whose rank shall correspond to that of other directors who serve as officers of the Board of Education, and who shall be paid the same salary as said directors, and who shall be known as the director of the department of school attendance and work permits, and also to appoint such a number of attendance officers, inspectors, clerks, and other assistants as shall be necessary to carry out the provisions of this Act.

Such appointments, other than that of the director of said department and clerks, shall be made from the list of applicants obtained from open competitive examinations conducted by the respective boards of examiners of the Board of Education, and designed to test the fitness of the applicants for the duties to be performed.

SEC. 3. That the juvenile court of the District of Columbia is hereby given jurisdiction in all cases arising from this Act.

SEC. 4. The Act of Congress approved June 8, 1906, entitled "An Act providing for compulsory education in the District of Columbia," and all other Acts or parts of Acts inconsistent herewith, are hereby repealed.

SEC. 5. That this Act shall take effect from the date of its enactment.

Approved, February 24, 1925.

Twenty-sixth Biennial Report
of the
Superintendent of Public Instruction
of the
State of Oregon
to the
Thirty-third Legislative Assembly
Regular Session
1925

1923-1924
Census
Enrollment (p. 42).

Number of pupils in grade (public) schools	152,320
In High Schools	35,662

Private and Parochial Schools, p. 43
(1923-1924)

Grade of schools	*Average number of months taught*	*Number of schools*	—*Teachers*— *Men*	*Women*	—— *Pupils* —— *Boys*	*Girls*
Elementary	8.5	99	149	392	6,119	5,60
Secondary	9	14	28	38	294	39
Totals	....	113	177	430	6,413	5,99

LAWS OF OREGON, 1925.

AN ACT approved February 9, 1925.

Section 1. That any child attending the public school, on application of his guardian or either of his parents, may be excused from such school for a period or periods not exceeding one hundred and twenty (120) minutes in any week to attend week-day schools giving instruction in religion.

FILED
MAR 2 1925
WM. R. STANSBURY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1924, No. 583

WALTER M. PIERCE, as Governor of the State of Oregon; ISAAC H. VAN WINKLE, as Attorney General of the State of Oregon, and STANLEY MYERS, as District Attorney for Multnomah County, State of Oregon, *Appellants*

vs.

THE SOCIETY OF THE SISTERS OF THE HOLY NAMES OF JESUS AND MARY, *Appellee*

APPENDIX II
TO BRIEF IN BEHALF OF APPELLEE

STATE LAWS RELATIVE TO PRIVATE SCHOOLS AND CLASSIFIED SUMMARY THEREOF

THE BELVEDERE PRESS, INC., PRINTERS, BALTIMORE, MD.

State Laws Relative to Private Schools
and
Classified Summary Thereof

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STATE LAWS RELATIVE TO PRIVATE SCHOOLS

ALABAMA

No Appropriation for Sectarian Purposes.

"No money raised for the support of the public schools shall be appropriated to or used for the support of any sectarian or denominational school. (*Constitution*, Article XIV, 263.)

Exemption from Taxation.

"The property of private corporations, associations and individuals of this State shall forever be taxed at the same rate; provided, this section shall not apply to institutions devoted exclusively to religious, educational or charitable purposes." (*Constitution*, Art. XI, Sec. 217.)

Compulsory Attendance.

"Every parent, guardian, or other person in the State of Alabama having control or charge of any child or children between the ages of eight (8) and sixteen (16) years shall be required to send such child or children to a public school or to a private, denominational or parochial school, taught by a competent instructor, and such child or children shall attend school for the entire length of the school term in every scholastic year." (*School Code*, 1919, p. 49.)

Branches to be Taught. Use of English.

"In every elementary school in the State there shall be taught at least reading, spelling, handwriting, arithmetic, oral and written English, geography, history of the United States and Alabama, community civics, agriculture, elementary science, hygiene, and sanitation, physical training, and such other studies as may be prescribed by the State board of education. English shall be the only language employed and taught in the first six grades of the elementary schools in the State." (*School Code*, 1919, p. 5.)

Physical Education.

"Every public school and private or parochial school shall carry out a system of physical education, the character of which shall conform to the program or course outlined by the State Department of Education." (*School Code*, 1922, p. 197.)

Certification of Private School Teachers.

"Every teacher employed in the schools giving instruction to pupils within the compulsory attendance ages, shall after October 1, 1920, hold a teacher's certificate issued by the State Department of Education." (*School Code*, 1919, p. 51.)

Regulations Relative to Teachers' Certificates.

(*School Code*, 1919, pp. 53–56.)

Private Schools Must Report.

"All private, denominational and parochial schools or institutions of any kind having a school in connection therewith shall register annually on or before the tenth day of October with the State Department of Education and are required to report on uniform blanks furnished by the State Superintendent of Education giving such statistics as relate to the number of pupils, the number of instructors, enrollment, attendance, course of study, length of term, cost of tuition, funds, value of property, and the general condition of the school, and any president or acting head of any such institution mentioned above who fails to so register or to make the reports required above when called on shall be punished by a fine of not less than ten ($10.00) dollars nor more than one hundred ($100.00) dollars for each and every offense.

"All private, denominational, or parochial schools offering instruction to pupils within the compulsory attendance ages shall keep all records and make all reports that may be required in any compulsory attendance law now in force or that may hereafter be enacted in the State of Alabama, and no pupil attending any private, denominational, or parochial school which fails to comply with the requirements of this act shall be considered as meeting the legal requirements of such compulsory attendance law." (*School Code*, 1919, pp. 110–111.)

Child Labor.

(*School Code*, 1919, pp. 147–156.)

Child Welfare Department.

The Child Welfare Department shall have the power "to exercise the right of visitation, inspection and cooperative supervision of all State . . . . and other institutions, public or private, receiving or caring for children, and of all orphanages, child placing societies . . . . etc." (*School Code*, 1919, p. 157.)

Inspection of Private Convents, Schools and Other Institutions.

"All public or private hospitals, reformatories, houses of detention, convents, asylums, sectarian seminaries, schools or other like institutions in the State of Alabama shall be subject to inspection, and open to inspection, by the inspectors hereinafter provided, at any and all times between the hours of 8 A. M. and 7 P. M., and at any other hour than those named, should the necessity therefor arise.

"Such inspection shall be made by an inspector or inspectors appointed by the governor of the State of Alabama—and it shall be the duty of the governor to appoint such inspector or inspectors and to direct when and where such inspection or inspections shall be made.

"Such inspector or inspectors, when appointed, shall make a careful inspection of the institution, directed to be inspected, as to its sanitary conditions inside and outside of the buildings, all rooms in such building or buildings, and the surrounding grounds and out houses belonging to or

connected with such institution; shall have full power and authority, and it shall be the duty of such inspector or inspectors to make inquiry of all those kept, boarded or confined in such institution, separate and apart from the presence of any officer or other person connected in any way with such institution, as to their treatment, whether they or others there are subject to involuntary confinement or servitude, or are forcibly detained or unlawfully confined in such institution; the declared purpose of this section being to afford, within the confines of the institution, and free from interference by or intimidation from any officer or other person in any way connected with said institution, a full opportunity to get the facts from any one therein kept, boarded or confined as to the manner in which such institution is conducted, and whether any one therein is involuntarily confined, subjected to servitude, or forcibly detained, or unlawfully held.

Such inspector or inspectors, as soon after making an inspection as practical, shall file in duplicate, one with the governor of the State of Alabama and one with the Superintendent of Education of the State of Alabama, a report in writing covering the points of inspection herein set out, and such other things as may seem pertinent to the purposes of such inspection, and stating conditions just as he found them, and as they are reported to him or them by those residing in or kept or confined in such institution; and this report shall be open to inspection by any citizen of the State of Alabama, or any officer or agent of the Federal government.

"It shall be unlawful for any officer or agent of any institution directed to be inspected, or for any other person, whether connected with said institution or not, to in any way hinder or impede, oppose or prevent any inspector or inspectors from performing their or his duty in making an inspection, when directed so to do by the authority or authorities herein mentioned, and any person convicted of violating any of the provisions hereof shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than Fifty, nor more than Five Hundred Dollars, and also be sentenced to hard labor for the county for not less than thirty, nor more than one hundred and eighty days.

"Any inspector or inspectors appointed as herein provided, and who accepts such an appointment, who shall divulge to any person or persons until the inspection is made, the fact of his appointment or when or where he will perform the inspection of any institution directed to be inspected shall be guilty of a misdemeanor, and upon conviction shall be fined not less than fifty nor more than five hundred dollars, and may also be sentenced to hard labor for the county for not less than thirty nor more than one hundred and eighty days.

"All laws, local special and general or either in conflict with the provision of this act be and they are hereby expressly repealed." (*School Code*, 1919, pp. 162–163.)

Incorporation of Denominational Education Boards.

"Education boards having for their purpose the fostering of education in general and education under religious denominational control in particular may become incorporated as hereinafter provided, and may be affiliated with or controlled by a convention or conventions, or an association or associations, whether incorporated or unincorporated, composed

of members, delegates, representatives or messengers of or from any church or religious association having a congregational form of church government.

"Any persons desiring to become so incorporated and being not less than five nor more than fifty in number shall file in the office of the Judge of Probate of the county in which the corporation is to have its principal place of business a certificate stating the corporate name selected, etc."

"Any corporation organized as herein provided . . . . may purchase and hold or receive . . . . real and personal property such as may be necessary . . . . to carry out the purposes and objects of the corporation; to make all by-laws and regulations necessary or deemed expedient for the management of the corporate affairs not inconsistent with the laws of the United States and the State of Alabama and not contrary to the constitution, rules and regulations of the convention or association with which the said education board may be affiliated or by which it may (be) controlled; . . . . to establish and support educational institutions; to print and disseminate religious and educational literature; to establish and conduct a teachers' bureau or teachers' bureaus; to receive and distribute all funds placed in its hands for distribution; . . . . to solicit, collect or receive subscriptions in money or otherwise for the advancement of the purposes of the corporation; . . . . to adopt such methods and employ such agencies as may be deemed necessary to create interest in education . . . ."

"Any corporation heretofore organized as an educational society under the general laws of this State relating to corporations not of a business character may accept the provisions of this act and become entitled to the privileges and benefits thereof and subject to all the terms and provisions thereof . . . ." (*School Code*, 1922, pp. 199–201.)

Fire Drill.

"It shall be the duty of the State Fire Marshal, his deputies and assistants to require officials and teachers of public and private schools and educational institutions to have at least one fire drill each month." (*School Code*, 1919, p. 171.)

ARIZONA

No Public Funds for Sectarian Purposes.

"No tax shall be laid or appropriation of public money made in aid of any church, or private or sectarian school, or any public service corporation." (*Constitution*, Art. IX, Sec. 10.)

Exemption from Taxation.

"Property of educational, charitable, and religious associations or institutions not used or held for profit may be exempted from taxation by law." (*Constitution*, Art. IX, Sec. 2.)

Compulsory Attendance.

"Every parent, guardian or other person in the State of Arizona, having control of any child between the age of eight and sixteen years,

is hereby required to send such child to a public school for the full time that such school is in session within the district where such child resides, provided that such parent, guardian or other preson having control of such child shall be excused from such duty by the board of Trustees of the district whenever it shall be shown to the satisfaction of such board and of the county school superintendent that one or more of the following reasons exist:

"That such child is taught at home by a competent teacher in the branches taught in the common schools of the State.

"That he is attending a regularly organized private or parochial school taught by competent teachers for the full time that the public schools of the district are in session." (*School Laws*, 1921, p. 48.)

Child Labor.

(*School Laws*, 1921, pp. 83–92.)

ARKANSAS

Exemption from Taxation.

". . . . the following property shall be exempt from taxation: . . . . . school buildings and apparatus; libraries and grounds used exclusively for school purposes, and buildings and grounds and materials used exclusively for public charity." (*Constitution*, Art. XVI, Sec. 5.)

Compulsory Attendance.

"From and after September first, nineteen hundred and seventeen, every parent, guardian or other person residing within the State of Arkansas, having in custody or charge any child or children between the ages of seven and fifteen, both inclusive, shall send such child or children to a public, private or parochial school.

"The minimum session of attendance under this Act shall be three-fourths of the session or sessions of the public school in the district or districts in which the child or children reside. All children shall be required to enter school not later than two weeks after the opening of the session or term." (*Digest of Laws Relating to Free Schools*, 1920, p. 15.)

Use of English.

"The basic language of instruction in the common school branches in all the schools of the State, public and private, shall be from and after the passage of this Act the English language only." (*Digest of Laws Relating to Free Schools*, 1920, p. 159.)

Private School in a Public Schoolhouse.

"The directors may permit a private school to be taught in the district school house during such time as the said house is not occupied by a public school, unless they be otherwise directed by a majority of the legal voters of the district." (*Digest of Laws Relating to Free Schools*, 1920, p. 150.)

CALIFORNIA

No Appropriation for Sectarian Purposes.

"No Public money shall ever be appropriated for the support of any sectarian or denominational school, or any school not under the exclusive control of the officers of the public schools; nor shall any sectarian or denominational doctrine be taught, or instruction thereon be permitted directly or indirectly, in any of the common schools of this State." (*Constitution*, Art. IX, Sec. 8.)

Exemption from Taxation.

"Any educational institution of collegiate grade, within the State of California, not conducted for profit, shall hold exempt from taxation its buildings and equipment, its grounds within which its buildings are located, not exceeding one hundred acres in area, its securities and income used exclusively for the purposes of education." (*Constitution*, Art. XIII, Sec. 1a.)

Compulsory Attendance.

"Each parent, guardian or other person having control or charge of any child between the ages of eight and sixteen years, not exempted under the provisions of this act, shall be required to send such child to a public full-time day school . . . . provided, that the following classes of children shall be exempted by the proper school authorities from the requirements of attendance upon a public full-time day school: . . . .

"(3) Children who are being instructed in a private full-time day school by persons capable of teaching; provided, that such school shall be taught in the English language and shall offer instruction in the several branches of study required to be taught in the public schools of this state; and provided, further, that the attendance of such pupils shall be kept by private school authorities in a register, such record of attendance to indicate clearly every absence of the pupil from school for a half day or more, during each day that school is maintained during the year.

"(4) Children who are being instructed, in study and recitation, for at least three hours a day for one hundred and sixty days each calendar year by a private tutor or other person, in the several branches of study required to be taught in the public schools of this State, and in the English language; provided, that such tutor or other person shall be capable of teaching; and provided, further, that such instruction shall be offered between the hours of eight o'clock a. m. and four o'clock p. m." (*School Law*, 1921, pp. 167–168.)

Studies Required.

"Instruction must be given in the following branches in the several grades in which they may be required, viz: reading, writing, spelling, arithmetic, geography, language and grammar, with special reference to composition, history of the State of California, history of the United States with special reference to the history of the constitution of the United States; and the history of the reasons for the adoption of each of its provisions; the duties of citizenship, together with instruction in local

civil government; elements of physiology and hygiene, with special reference to the injurious effects of tobacco, alcohol and narcotics on the human system; morals and manners. In the first six grades of the elementary schools, at least two-thirds of the pupil's time during each week shall be devoted to study and recitation of the subjects hereinbefore enumerated, and in the seventh and eighth grades at least twelve and one-half hours of the pupil's time each week shall be devoted to the study and recitation of such subjects.

"From the time remaining after the study and recitations of the studies hereinbefore enumerated, at least twenty minutes of each school day must be devoted by all pupils over the age of eight years to such physical training as shall be most conducive to their proper physical development, and instruction must be given in nature study with special reference to agriculture and animal and bird life, music, drawing, elementary bookkeeping, humane education, and thrift." (*School Law*, 1921, pp. 163–164.)

Use of English.

"All schools must be taught in the English language." (*School Law*, 1921, p. 163.)

Teaching the Constitution.

"In all public and private schools located within the State of California, commencing with the school year next ensuing after the passage of this act, there shall be given regular courses of instruction in the constitution of the United States, including the study of American institutions and ideals.

"Such instruction in the constitution of the United States shall begin not later than the opening of the eighth grade and shall continue in the high school and in courses in state colleges, universities, and educational departments of state, municipal and private institutions, to an extent to be determined by the superintendent of public instruction. No pupil shall receive a certificate of graduation from any such school unless he has satisfactorily passed an examination on the provisions and principles of the United States constitution." (*Session Laws*, 1923, ch. 176.)

Special Part-Time Classes.

Minors under eighteen and over elementary school age, who have not completed a public or private high school course and "are not in attendance upon a public or a private full-time day school or satisfactory part-time classes maintained by other agencies, shall be, and hereby are, required to attend upon a special part-time class maintained by the high school board of the district wherein they reside, or by the high school board of an adjoining district, for not less than four sixty-minute hours per week for the regularly established annual school term . . . ." (*School Law*, 1921, pp. 300–301.)

Special Classes for Instruction in English.

Persons over 18 and under 21 who cannot speak, read, or write the English language to a degree of proficiency equal to that required for the

completion of the 6th grade of the elementary schools of the state, and who are not in attendance upon a public or private full-time or part-time school, shall, for at least four sixty-minute hours per week, attend a special class maintained for persons who cannot read, speak, or write the English language. (*School Law*, 1921, pp. 301–302.)

Truancy.

(*School Law*, 1921, pp. 168–187.)

Child Labor.

(*School Law*, 1921, pp. 189–194.)

Private Schools Conducted in a Foreign Language.

"No person shall conduct or teach in a private school, conducted wholly or in part in a language of a foreign nation in this state unless and until he shall have first applied to and obtained a permit so to do from the superintendent of public instruction or deputy appointed by the superintendent for such purposes. This shall also be construed to include persons exercising or performing administrative powers in any such school."

Such permit shall be issued to persons having knowledge of American history and institutions, and knowing how to read, write and speak English.

Applicants must file affidavit to observe this law and to endeavor to make pupils loyal citizens.

Such private schools shall not be in session during hours of public schools, nor more than one hour each day, six hours each week, thirty-eight weeks each year.

Such private schools may be inspected by the superintendent of public instruction. (*School Law*, 1921, pp. 71–73.)

COLORADO

Exemption from Taxation.

"Lots, with the buildings thereon, if said buildings are used solely and exclusively for religious worship, for schools, or for strictly charitable purposes, also cemeteries not used or held for private or corporate profit, shall be exempt from taxation, unless otherwise provided by general law." (*Constitution*, Art. X, Sec. 5.)

No Appropriation for Sectarian Purposes.

"Neither the general assembly, nor any county, city, town, township, school district, or other public corporation shall ever make any appropriation, or pay from any public fund or moneys whatever, anything in aid of any church or sectarian society, or for any sectarian purpose, or to help support or sustain any school, academy, seminary, college, university, or other literary or scientific institution controlled by any church or sectarian denomination whatsoever; nor shall any grant or donation of land, money, or other personal property ever be made by the State, or any such public corporation to any church or for any sectarian purpose." (*Constitution*, Art. IX, Sec. 7.)

Compulsory Education.

"That in all school districts of this state, all parents, guardians and other persons having care of children shall instruct them, or cause them to be instructed, in reading, writing, spelling, English grammar, geography and arithmetic. In such districts, every parent, guardian or other person having charge of any child between the ages of eight and sixteen years, shall send such child to a public, private or parochial school for the entire school year during which the public schools are in session in such districts; Provided, however, That this act shall not apply to children over fourteen years of age where such child shall have completed the eighth grade, or may be eligible to enter any high school in such district, or where its help is necessary for its own or its parent's support, or where for good cause shown it would be for the best interests of such child to be relieved from the provisions of this act; Provided, further, That if such child is being sufficiently instructed at home by a person qualified, such child shall not be subject to the provisions of this act; . . . ." (*School Laws*, 1917, p. 40.)

"All minors over the age of 14 years and under the age of 16 years who cannot read and write the English language, shall attend school at least one-half day of each day, or attend a public night school, or take regular private instruction from some person qualified, in the opinion of the county superintendent of schools, in which such district or the greater portion of the same lies, until such minor obtains a certificate from such superintendent that he or she can read at sight and write legibly, simple sentences in English. (*School Laws*, 1917, p. 41.)

Instruction in Private Schools.

"The compulsory school law requires that children between the ages of eight and sixteen, attending a private school, should receive such instruction as would be an equivalent to that given in the public schools. It is the duty of the truant officer to investigate such cases and require whatever statements may be necessary concerning the work." (*Decisions, School Laws*, 1917, Appendix, No. 73.)

Use of English.

"Instruction in the common branches of study in the public elementary schools of this state shall be conducted through the medium of the English language only, nor shall any other than the English language be taught as a separate and distinct branch of itself.

"During the time that the public schools of the district in which he is a resident are in session, no child of school age who has not completed the eighth grade shall be permitted to attend any school where the common branches are not taught in the English language." (*Educational Laws*, 1919, p. 31.)

Truancy.

(*School Laws*, 1917, pp. 42–45, 172–175.)

Delinquency.

(*School Laws*, 1917, pp. 37–39.)

Child Labor.

(*School Laws*, 1917, pp. 26–37.)

Religious Instruction in Truant Schools.

"No religious instruction shall be given in such school, except such as is allowed by law to be given in public schools; but the board of education shall make suitable regulation so that the inmates may receive religious training in accordance with the belief of the parents of such children, either by allowing religious services to be held in the institution or by arranging for attendance at public service elsewhere." (*School Laws*, 1917, pp. 172–173.)

Oath of Allegiance.

"Any person now holding a certificate to teach in any public school in the state of Colorado or who shall hereafter be issued a certificate to teach in such public school within the state of Colorado shall subscribe to the following oath or affirmation:

"'I solemnly swear or affirm that I will support the constitution of the State of Colorado, and of the United States of America and the laws of the State of Colorado and of the United States, and will teach, by precept and example, respect for the flags of the United States and of the State of Colorado, reverence for law and order and undivided allegiance to the government of one country, the United States of America.'"

"Every teacher now teaching, or who may hereafter be employed to teach in any private or parochial school or in any academy, college, university or other institution of learning in the State of Colorado, shall, before entering upon, or continuing, the discharge of his or her duties, be required to take the same oath or affirmation of allegiance as that prescribed for public school teachers." (*Session Laws*, 1921, Chapter 213.)

CONNECTICUT

School Fund Not to be Diverted.

"The fund, called the School Fund shall remain a perpetual fund, the interest of which shall be inviolably appropriated to the support and encouragement of the public, or common schools throughout the State, and for the equal benefit of all the people thereof. The value and amount of said fund, shall, as soon as practicable, be ascertained in such manner as the General Assembly may prescribe, published, and recorded in the Controller's office; and no law shall ever be made, authorizing said fund to be diverted to any other use than the encouragement and support of public, or common schools, among the several school societies, as justice and equity shall require." (*Constitution*, Art. VIII, Sec. 2.)

Compulsory Attendance.

"All parents and those who have the care of children shall bring them up in some lawful and honest employment and instruct them or cause them to be instructed in reading, writing, spelling, English grammar, geography, arithmetic, and United States history. Every parent or other

person having control of a child over seven and under sixteen years of age shall cause such child to attend a public day school regularly during the hours and terms the public school in the district wherein such child resides is in session, or while the school is in session where provision for the instruction of such child is made according to law, unless the parent or person having control of such child can show that the child is elsewhere receiving regularly thorough instruction during said hours and terms in the studies taught in the public schools." (*School Code*, 1922, p. 12.)

Registers and Reports.

"Attendance of children at a school other than a public school shall not be regarded as compliance with the laws of the State requiring parents and other persons having control of children to cause them to attend school, unless the teachers or persons having control of such school shall keep a register of attendance in the form and manner prescribed by the state board of education for the public schools, which register shall at all times during school hours be open to the inspection of the secretary and agents of the state board of education, and shall make such reports and returns concerning the school under their charge to the secretary of the state board of education as are required from the school visitors concerning the public schools, except that no report concerning expenses shall be required. The secretary of the state board of education shall furnish to the teachers or persons having charge of any school, on their request, such registers and blanks for returns as may be necessary for compliance with the provisions of this section." (*School Code*, 1922, pp. 14–15.)

Part-Time School.

"Every child between fourteen and sixteen years of age, residing in a city, town, or district in which public continuation schools are maintained, in possession of either an employment or a leaving certificate issued under the provisions of the general statutes and who has not completed such course of study as is required for the completion of the eight elementary grades or the equivalent of such grades in the public schools of such city, town, or district, shall attend a public continuation school of such city, town or district, or other continuation school during an equivalent course of instruction, for not less than four hours each week in each school year, between the hours of eight a. m. and five p. m., the time in continuation school to be counted as part of the working day or working week." (*School Code*, 1922, p. 24.)

Truancy.

(*School Code*, 1922, pp. 15–17.)

Child Labor.

(*School Code*, 1922, pp. 139–144.)

Instruction in Citizenship.

"The duties of citizenship, including the knowledge of the form of national, state and local government, shall be taught in all elementary

schools, both public and private, as a regular branch of study to pupils above the fourth grade. The provisions of this section shall apply to classes in ungraded schools corresponding to the grades designated herein. Normal schools and teachers' training schools shall give instruction in said subjects and concerning methods of teaching the same. The State Board of Education shall prepare and distribute to every school an outline of questions and suggestions relating to said subjects, and said outline may be used in such schools." (*Session Laws*, 1923, Chapter 148.)

Use of English in Schools.

"The medium of instruction and administration in all public and private elementary schools in this state shall be the English language and not more than one hour in any school day may be given to instruction in any one language other than English. A person who shall violate any provision of this act shall be fined not less than fifty dollars nor more than five hundred dollars or imprisoned not more than six months or both." (*Session Laws*, 1923, Chapter 166.)

Approval of Incorporated Academies.

"The State Board of Education may examine any incorporated or endowed high school or academy in this state, and if it appears that said school or academy has a satisfactory high school course of study and sufficient equipment for high school instruction, said board shall approve said school or academy under the provisions of this chapter, and any town in which a high school is not maintained shall pay the whole or a a part of the tuition fee of scholars attending such school or academy, and such town shall be reimbursed therefor by the state under the terms and conditions of this chapter." (*School Code*, 1922, p. 80.)

Teachers of Incorporated Secondary Schools May be Included in Retirement System.

"Any incorporated secondary school not under the orders and superintendence of a duly elected school committee or board of education, but located in a town not maintaining a high school and providing free tuition to pupils of the town in which it is located, and which shall have been approved by the State Board of Education under the provisions of Chapter 54 of the general statutes, may upon application of its board of trustees be considered a 'public school' and included in the retirement system for teachers at the discretion of the retirement board." (*School Code*, 1922, p. 97.)

Use of Public Schoolhouse.

"Any school district or town may, by a vote of two-thirds of those present at any legal meeting, allow its schoolhouse or schoolhouses, when not in use for school purposes, to be used for any other purpose." (*School Code*, 1922, p. 55.)

DELAWARE

No Appropriation for Sectarian Purposes; Exemption from Taxation

"No portion of any fund now existing, or which may hereafter be appropriated, or raised by tax, for educational purposes, shall be appropriated to, or used by, or in aid of any sectarian, church or denominational school; provided, that all real or personal property used for school purposes, where the tuition is free, shall be exempt from taxation and assessment for public purposes." (*Constitution*, Art. X, Sec. 3.)

School Attendance.

"All the white public schools of the state shall be free to all the white children of school age, resident in the state; and all the colored public schools of the state shall be free to all the colored children of school age, resident of the state.

"Every parent, guardian or other person in this state having control of a child between the ages of seven and fourteen is required to and shall send such child to a free public school each day of the minimum school year of one hundred and sixty days. Every such parent, guardian or other person having control of a child fourteen years of age or fifteen years of age, or sixteen years of age, who has not completed the work of the eighth grade of the free public schools of the School District or Special School District in which the child resides, is required to and shall send such child to a free public school in such District not less than one hundred days, as nearly consecutive as possible, beginning not later than November first of the school year; unless it can be shown, and witnessed by written endorsement, to the satisfaction of the Superintendent of Schools of a Special School District, or in the case of School Districts, to the satisfaction of an official designated by the State Board of Education, and by a written examination, that such child is elsewhere receiving regular and thorough instruction during said minimum school year as above provided in the subjects prescribed for the elementary schools of the state, in a manner suitable to children of the same age and stage of advancement. Provided that the written certificate of a principal, teacher or Board of Trustees, or other person or persons in charge of a private school shall be satisfactory evidence to the Superintendent of a Special School District, and in the case of School Districts, shall be satisfactory evidence to the said official designated by the State Board of Education that such child is receiving regular and thorough instruction required under this section." (*School Code*, 1921, pp. 62–64.)

Use of English.

"All elementary school subjects shall be taught in the English language in all schools in the state." (*School Code*, 1921, p. 13.)

Teacher Training.

"No individual, public or private educational association, corporation or institution shall offer a course or courses for the training of public school teachers without having first procured the assent of the State Board of Education to such teacher training course." (*School Code*, 1921, p. 14.)

Private Schools Must Report.

"All persons conducting private schools, and all private educational associations, corporations, or institutions shall report to the State Board of Education annually, on or before the thirty-first day of July, as to enrollment, age of pupils and attendance. Such persons shall also submit a monthly report on form provided by the State Board of Education to the State Board of Education; giving the name of each pupil enrolled, the date of enrollment, total days of attendance to date, and the number of days in attendance during the month for which the particular report is made.

"Private teachers and the principal or head teacher of private schools or educational institutions shall make out and sign such records as are required by the laws regulating child labor as provided by Article III of Chapter Ninety of the Revised Code." (*School Code*, 1921, pp. 85–86.)

Instruction in the Constitution.

"In all public and private schools located within the State of Delaware, commencing with the school year next ensuing after the passage of this Act, there shall be given regular courses of instruction in the Constitution of the United States and the Constitution of the State of Delaware.

"Such instruction in the Constitution of the United States and the Constitution of the State of Delaware shall begin not later than the opening of the Eighth Grade, and shall continue in the High School course and in courses of state and municipal institutions to an extent to be determined by the State Board of Education." (*Session Laws*, 1923, Chapter 183.)

FLORIDA

Exemption from Taxation.

"The property of all corporations, ... shall be subject to taxation unless such property be held and used exclusively for religious, scientific, municipal, educational, literary or charitable purposes." (*Constitution*, Art. XVI, Sec. 16.)

No Appropriation for Sectarian Purposes.

"No law shall be enacted authorizing the diversion or the lending of any County or District School Funds, or the appropriation of any part of the permanent or available school fund to any other than school purposes; nor shall the same, or any part thereof, be appropriated to or used for the support of any sectarian school." (*Constitution*, Art. XII, Sec. 13.)

Compulsory Attendance.

"From and after July 1st, 1919, every parent, guardian or other person having citizenship within the State of Florida having the custody, control or charge of any child or children within the State of Florida between the ages of seven and sixteen years, both inclusive, shall cause said child or children to attend a public or private school each year for a term or period of not less than substantially the number of days the public or private school which said child attends is held annually in the district

in which the school is located or in which such child or children may reside; Provided, that any child may be taught by parent or guardian upon written authority from the County Superintendent of Public Instruction." (*School Code*, 1921, p. 99.)

Record of Attendance.

"Whenever, under the provisions of this Act, any child shall receive instruction privately or in any private school, the private teacher, principal or teacher in charge of such private school shall keep a record of the attendance of such child or children and the County Superintendent in checking his lists of attendance may call on the private school principal to verify a child's attendance." (*School Code*, 1921, p. 101.)

Medical Inspection.

"All school children shall be examined as to their physical condition at least once during each school year." (*School Code*, 1921, p. 93.)

Inspection of Private Institutions.

"The Governor of this State, upon the recommendation of the Board of County Commissioners, shall appoint a commission in each county, to consist of six members, three of whom shall be women and three shall be men, to inspect all public and private charitable institutions within the county, including hospitals, sanatoriums, public and private schools, high schools and colleges, alms houses, houses of the Good Shepherd, detention, and reformatory institutions, nunneries, convents, asylums, seminaries and other institutions maintained by religious or educational institutions.

"It shall be the duty of the commission to visit each institution mentioned in the foregoing section situated within the county, once each year, or oftener, if the commission deem it necessary for the purpose of ascertaining the treatment of the inmates of said institutions and the general conditions of said institutions, and report their findings to the Governor and the county commissioners of the county: Provided, The visits of the said commission shall not be made known or announced beforehand." (*School Code*, 1921, p. 92.)

GEORGIA

Exemption from Taxation.

"The General Assembly may, by law, exempt from taxation all . . . places of religious worship or burial; all institutions of purely public charity; all buildings erected for and used as a college, incorporated academy, or other seminary of learning; . . . . Provided, the property so exempted be not used for purposes of private or corporate profit or income." (*Constitution, Art.* VII, Sec. 2 No. 2.)

No Public Funds for Sectarian Purposes.

"No money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect, or denomination of religionists, or of any sectarian institution." (*Constitution*, Art. I, Sec. 1, No. 14.)

Compulsory Attendance.

"Every parent, guardian or other person having charge and control of a child between the ages of eight and fourteen years, who is not exempted or excused as hereinafter provided, shall cause said child to be enrolled in and to attend continuously for six months of each year a public school of the district or of city or town in which the child resides; which period of attendance shall commence at the beginning of the first term of said school in the year. Such attendance at a public school shall not be required where the child attends for the same period some other school giving instruction in the ordinary branches of English education, or has completed the seventh grade of school work as prescribed by the State Board of Education, or where, for good reasons, the sufficiency of which shall be determined by the Board of Education of the county or of the city or town in which the child resides, the said board excuses temporarily the child from such attendance . . . ." (*School Code*, 1920, p. 59.)

IDAHO

No Appropriation for Sectarian Purposes.

"Neither the legislature nor any county, city, town, township, school district or other public corporation, shall ever make any appropriation or pay from any public fund or moneys whatever, anything in aid of any church or sectarian, or religious society, or for any sectarian or religious purpose, or to help support or sustain any school, academy, seminary, college, university or other literary or scientific institution, controlled by any church, sectarian or religious denomination whatsoever; nor shall any grant or donation of land, money or other personal property ever be made by the state or any such public corporation, to any church or for any sectarian or religious purpose." (*Constitution*, Art. IX, Sec. 5.)

Compulsory Attendance.

"In all districts of this state all parents, guardians and other persons having care of children shall instruct them or cause them to be instructed in reading, writing, spelling, English grammar, geography and arithmetic. In such districts every parent, guardian or other person having charge of any child between the ages of 8 and 18 years, shall send such child to a public, private or parochial school for the entire year during which the public schools are in session in such district; Provided, however, that this article shall not apply to children over 15 years of age where such child shall have completed the eighth grade." (*School Code*, 1921, p. 40.)

Use of English in Schools.

"It shall be unlawful for any school superintendent, school principal, teacher, instructor, trustee, school board or school department to teach or cause to be taught in the grade schools and high schools, or in any school teaching similar branches in the State of Idaho, any subject in any language other than the English language: Provided, further, That the provisions of this article shall not apply to instructions in any particular language for the purpose of teaching said language, nor to the use of foreign words and phrases in designating scientific terms." (*School Code*, 1921, p. 96.)

Delinquency.

(*School Code*, 1921, pp. 102–108.)

Supervision of Institutions Receiving Delinquent Children.

"All institutions or associations, other than state institutions, receiving children under this article (Delinquency), shall be subject to the same visitation, inspection and supervision as are public charitable institutions of this state." (*School Code*, 1921, p. 106.)

Child Labor.

(*School Code*, 1921, pp. 109–111.)

Teaching the Constitution.

"In all public and private schools located within the State of Idaho, there shall be given instruction in the constitution of the United States, commencing with the school year next following the passage of this act. Such instruction in the constitution of the United States shall be given in the elementary course in the sixth grade, shall be given as a grammar grade course in the eighth grade, and shall continue in the high school course, and in the courses in state colleges and universities, and the educational departments of state and municipal institutions, to an extent to be determined by the State Board of Education." (*Session Laws*, 1923, Chapter 26.)

ILLINOIS

Appropriations for Sectarian Purposes.

"Neither the General Assembly nor any county, city, town, township, school district or other public corporation shall ever make any appropriation, or pay from any public fund whatever, anything in aid of any church or sectarian purpose, or to help support or sustain any school, academy, seminary, college, university or other literary or scientific institution, controlled by any church or sectarian denomination whatever; nor shall any grant or donation of land, money or other personal property ever be made by the state or any such public corporation to any church or for any sectarian purpose." (*Constitution*, Art. VIII, Sec. 3.)

"No county, city, town, township, school district or other public corporation shall make any appropriation, or pay from any school fund whatever, anything in aid of any church or sectarian purpose, or to support or sustain any school, academy, seminary, college, university, or other literary or scientific institution controlled by any church or sectarian denomination whatever; nor shall any grant or donation of money or other personal property, be made by any such corporation to any church or for any sectarian purpose." (*School Code*, 1921, pp. 94–95.)

Exemption from Taxation.

". . . . and such other property as may be used exclusively . . . . for school, religious . . . . and charitable purposes, may be exempted from taxation." (*Constitution*, Art. IX, Sec. 3.)

Compulsory Attendance.

"Every person having control of any child between the ages of seven and sixteen years, shall annually cause such child to attend some public or private school for the entire time during which the school attended is in session, which shall not be less than seven months of actual teaching: Provided, that in the following cases children shall not be required to attend the public schools:

"a. Any child who is being taught in a private or a parochial school in such branches as are taught to children of corresponding age and grade in the public schools, or who, upon completion of the work in such schools, shall present satisfactory evidence to the county superintendent of schools, and, in appropriate cases, to the superintendent of city schools, that he has completed sufficient work to entitle him to an eighth grade diploma;" (*School Code*, 1921, p. 97.)

Truancy.

(*School Code*, 1921, pp. 98–100.)

Child Labor.

(*School Code*, 1921, pp. 111–118.)

Continuation Schools.

Boards of education or school directors may establish continuation schools for minors between 14 and 16, after September, 1921; for minors between 14 and 17, after September, 1923; and for minors between 14 and 18, after September, 1925. Every minor who is not attending school and has not completed a high school course must attend a continuation school class, when and where one is established in the district in which he resides. Attendance shall be for 8 hours a week for 36 weeks, or for 300 hours during three successive months.

"Nothing in this Act contained shall be held, deemed or construed as having any application to children or minors who attend private or parochial day schools or to children or minors who are receiving equivalent educational training or instruction in the homes of their parents or guardians either by said parents or guardians or by private tutors provided by said parents or guardians." (*School Code*, 1921, p. 123.)

Parental or Truant Schools.

"The Board of Education shall make suitable regulations so that the inmates (of parental or truant schools) may receive religious training in accordance with the belief of the parents of such children either by allowing religious services to be held in the institution or by arranging for attendance at public service elsewhere." (*School Code*, 1921, p. 60.)

English as the Language of Instruction.

"Instruction in the elementary branches of education in all schools in Illinois shall be in the English language." (*School Code*, 1921, p. 101.)

Reports from Colleges.

The Superintendent of Public Instruction shall "request the president, principal, or other proper officer of every organized university,

college, seminary, academy or other educational institution, whether incorporated or unincorporated, to submit such report as he may require, in order to lay before the General Assembly a full exhibit of the affairs and conditions of such institutions and of the educational resources of the state." (*School Code*, 1921, p. 7.)

Superintendent to Visit Institutions.

It shall be the duty of the Superintendent of Public Instruction "to visit such of the charitable institutions of the state as are educational in their character, to examine their facilities for instruction, and to prescribe forms for such reports as he may desire from their superintendents." (*Session Laws*, 1923, p. 576.)

Schoolhouses.

The Board of Directors "shall grant the temporary use of public school houses, when not occupied by schools, for religious meetings and Sunday schools." (*School Code*, 1921, p. 44.)

INDIANA

School Support.

"No money shall be drawn from the treasury for the benefit of any religious or theological institution." (*Constitution*, Art. I, Sec. 6.)

Exemption from Taxation.

"The General Assembly shall provide, by law, for a uniform and equal rate of assessment and taxation; and shall prescribe such regulations as shall secure a just valuation for taxation of all property, both real and personal, excepting such only for municipal, educational, literary, scientific, religious or charitable purposes, as may be specially exempted by law." (*Constitution*, Art. X, Sec. 1.)

Compulsory Attendance.

"Unless otherwise provided herein, every child between the ages of seven and sixteen years shall attend public school, or other school taught in the English language which is open to the inspection of local and state attendance and school officers; and such child shall attend such school each year during the entire time the public schools are in session in the school district in which such child resides. . . . . Every principal and teacher in every public or other school which is attended by one or more minors between the ages or seven and sixteen years shall furnish, on the request of the superintendent of the atttendance district wherein such school is located, a list of names, addresses and ages of all minors attending such school and shall further report immediately to such superintendent the name, address and date of withdrawal of every such minor under sixteen years of age withdrawing from such school and shall also immediately report to such superintendent the name and address of every such pupil absent from school without lawful excuse." (*Supplement to School Code*, 1921, pp. 71–72.)

School Attendance Record.

"An accurate daily record of the attendance of all children between the ages of seven and sixteen years shall be kept by the teacher of every public and other school and such record shall at all times be open to the inspection of attendance and school officials and agents of the industrial board of Indiana, and every such teacher shall fully answer all inquiries lawfully made by such attendance and school officials and such agents of the industrial board of Indiana." (*Supplement to School Code*, 1921, p. 74.)

Child Labor. Truancy.

(*Supplement to School Code*, 1921, pp. 72–84.)

Vocational Schools.

Where vocational schools have been established, the board of education or township trustees may require all youths between the ages of fourteen and seventeen or eighteen, who are regularly employed, to attend part-time school not less than four hours per week between 8 a. m. and 5 p. m. during the school term. (*Supplement to School Code*, 1921, p. 40.)

All Subjects to be Taught in English.

"Be it enacted by the General Assembly of the State of Indiana, That all subjects and branches taught in the elementary schools of the State of Indiana and all elementary schools maintained in connection with benevolent or correctional institutions, shall be taught in the English language only, and the trustee, and such other officers as may be in control, shall have taught in them, orthography, reading, writing, arithmetic, geography, English grammar, physiology, history of the United States, scientific temperance and good behavior, and such other branches of learning as the advancement of pupils may require, and the trustee, and other officers in control direct: Provided, That the German language shall not be taught in any of the elementary schools of this state. The tuition in such schools shall be without charge." (*Supplement to School Code*, 1921, p. 3.)

German Language Forbidden.*

"All private and parochial schools and all schools maintained in connection with the benevolent and correctional institutions within this state which instruct pupils who have not completed a course of study equivalent to that prescribed for the first eight grades of the elementary schools of this state, shall be taught in the English language only, and the persons or officers in control shall have taught in them such branches of learning as the advancement of pupils may require, and the persons or officers in control direct: Provided, That the German language shall not be taught in any such schools within this state." (*Supplement to School Code*, 1921, p. 3.)

State Teachers' Training Board.

"POWERS AND DUTIES—The state board of education, in addition to its present powers and duties, shall be and is hereby constituted a state

* See U. S. Supreme Court decision in the Nebraska foreign language case, p. 159.

teachers' training board, and, as such, is authorized and directed to arrange for a regular system of normal school instruction throughout the state; to accredit such schools and professional departments in schools as shall comply with the standard now in full force as hereafter fixed by legislative enactment in the state system of normal school instruction; to establish, inspect, pass upon and approve, reject, alter, amend or enlarge courses of study and teaching in the several accredited normal schools and the accredited professional departments in schools of the state; to determine upon credits to be allowed for the work of accredited schools and departments, and equivalents, if any, to be accepted for such work, or any part thereof; and to determine upon the school grades or years to which each kind of teachers' certificates shall apply. Said board shall make no rule, regulation or requirement applying to any accredited school or department which shall not under like circumstances apply to each and every accredited school and department in the state, nor shall any requirement be in excess of the requirements of the Indiana state normal school; it being the purpose and intent of this act that all schools and departments for normal instruction and the training of teachers shall maintain as nearly as possible like standards of excellence and efficiency. (*Supplement to School Code*, 1921, p. 7.)

"Authority to Approve Courses—Percentage of Credits. The state teachers' training board be and the same is hereby authorized to establish an approved two years' course, an approved three years' course, and an approved four years' course for the training of teachers in any accredited school or department, maintaining a practice teaching department: Provided, That not less than one-fifth (1/5) of the number of credits in said courses shall be in professional subjects including observation and practice teaching." (*Supplement to School Code*, 1921, pp. 7–8.)

"Prescribe Courses of Study—Certificates Recognized by State Normal. The state teachers' training board shall have power and authority to prescribe courses of study upon completion of which graded certificates of work done may be granted by any such accredited school, which certificate shall be recognized by the Indiana State Normal School so far as such certificates meet the requirements of said school's course." (*Supplement to School Code*, 1921, pp. 4–5.)

" 'Accredited' School or Department—Said state teachers' training board shall grant to each school and department accepting the provisions of this act and agreeing to be bound by the rules and regulations of said board the right to use the word 'accredited' as a part of the title or name of such school or department, which right shall be revoked by said board at any time upon the refusal of any such school or department to abide by any rule or regulation of said board." (*Supplement to School Code*, 1921, p. 5.)

"Life Certificate—To Whom Issued. It shall be the duty of the state teachers' training board to issue without examination to every holder of a state elementary provisional certificate, issued under the provisions of this act, a life certificate of like force and effect upon satisfactory evidence that the holder thereof has completed at least two (2) years of successful teaching in the public elementary schools within the life of said provisional certificate; and to issue without examination a life state high school certificate to the holder of a high school provisional certificate,

issued under the provisions of this act, for teaching in any high school in the state the subjects in which he has earned two (2) full years of credit, upon satisfactory evidence that the holder thereof has completed at least two (2) years of successful experience in high school teaching in said subjects." (*Supplement to School Code*, 1921, p. 5.)

"INSPECTION AND SUPERVISION OF TEACHERS' TRAINING COURSES—The State Superintendent of Public Instruction, with the approval of the state teachers' training board, may appoint a suitable person to inspect and supervise said teachers' training courses and professional courses in said accredited schools and departments, under the direction of the state superintendent of public instruction and the state teachers' training board. The salary and term of office of such person shall be fixed by the state teachers' training board and he shall be removable only by said board." (*Supplement to School Code*, 1921, pp. 5–6.)

Certification of Teachers.

(*Supplement to School Code*, 1921, pp. 6–10.)

Physical Education in Accredited Schools and Departments.

"The State Board of Education, in arranging for a regular system of normal school instruction throughout the state, and in designating what schools and professional departments therein shall be accredited in the state system of normal school instruction, may prescribe and require that no public or private educational institution of the state shall be admitted to the 'accredited' class of the state system of normal school instruction unless and until such educational institutions shall prescribe a suitable course in physical education, to be approved by the board, and shall make the completion of such course a requirement for graduation." (*Supplement to School Code*, 1921, pp. 30–31.)

Physical Education Courses in Schools.

"The State Board of Education may prescribe suitable courses of instruction in physical education, in accordance with the provisions of this act, for all pupils enrolled in the private, elementary and high schools of the state, except pupils who may be excused from such training on account of physical disability, such physical disability to be determined by the health supervisor of the school corporation, if there be a health supervisor, or by any reputable physician licensed to practice medicine in the state. Such courses of instruction in physical training shall be adapted to the ages and capabilities of the pupils in the several grades of the elementary and high schools and shall include physical exercises, calisthenics, formation drills, games and athletics and such other features and details as, in the discretion of the State Board of Education, may aid in carrying out the spirit and purpose of this act." (*Supplement to School Code*, 1921, pp. 28–29.)

High Schools.

High school inspectors shall "confer with private and parochial school authorities and advise with them for the purpose of improving and standardizing the work of these schools and for the purpose of coordinating the work of the teachers and others charged with the responsibilities of these schools." (*Supplement to School Code*, 1921, p. 66.)

Health Inspection.

"In every city of this state having a population of more than one hundred thousand, according to the last United States census, it shall be the duty of the board of public health and charities of such city, for the protection of public health, to make medical inspection, from time to time, of all persons attending, or employed in or about all public, private and parochial schools in such city." (*School Code*, 1917, pp. 180–181.)

Use of Schoolhouse for Private School.

"When a schoolhouse is unoccupied by a common school of the state, and the people who form the school at such house desire that a private school be taught therein, and a majority of them make application to the trustee having charge of such house for the use of it for such private school, it shall be the duty of the trustee to permit said school house to be used for such private school by such teacher as may be mentioned in the application, but not for a longer time than until said house may be wanted for a public school; and such permission and use shall be upon the condition that the teacher employed in said school shall report, in writing, to the trustee—

"*First*—The number of teachers employed, distinguishing between male and female.

"*Second*—The number of pupils admitted into the school within the term, and the average daily attendance.

"*Third*—The cost of tuition, per pupil per month, in said school." (*School Code*, 1917, p. 108.)

Compulsory Fire Drill.

"It shall be the duty of the state fire marshal, his duputies and assistants to require teachers of public and private schools and educational institutions to have one fire drill each month and to keep all doors and exits unlocked during school hours." (*School Code*, 1917, p. 128.)

German—Prohibited in the Elementary Schools.

"School authorities are prohibited from teaching in the German language the catechism or other religious subjects or school subjects in public, private, or parochial schools in Indiana. (Opinion dated March 6, 1919, Attorney-General Stansbury.)" (*Supplement to School Code*, 1919, p. 50.)

German Prohibited in the High Schools.

"It is unlawful for school authorities to permit the teaching of German in the high schools of the state. (Opinion dated March 26, 1919, Attorney-General Stansbury.)" (*Supplement to School Code*, 1919, p. 50.)

Sisters May Teach in Public Schools.

"On April 7, 1921, Attorney-General Lesh published an opinion to the effect that the wearing of a religious garb does not disqualify a person to teach in the public schools of Indiana.*

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*See "State Supreme Court Decisions on the Wearing of Religious Garb in Public Schools," p. 203 and "Nuns as Public School Teachers," p. 207.

IOWA

Compulsory Attendance.

"Any person having control of any child of the age of seven to sixteen years inclusive, in proper physical and mental condition to attend school, shall cause such child to attend some public, private, or parochial school, where the common school branches of reading, writing, spelling, arithmetic, grammar, geography, physiology, and United States history are taught, or to attend upon equivalent instruction by a competent teacher elsewhere than school, for at least twenty-four consecutive school weeks in each school year, commencing with the first week of school after the first day of September, unless the board of school directors shall determine upon a later date, which date shall not be later than the first Monday in December; but the board of school directors in any city of the first or second class may require attendance for the entire time the schools are in session in any school year." (*School Laws*, 1919, p. 70.)

Private Schools to Report.

"Upon notice from the secretary of the school corporation within which such school is conducted, it shall be the duty of each principal of each private or parochial school, once during each school year, and at any time when requested in individual cases, and within ten days from the receipt of such notice, to furnish to such secretary a certificate and report of the names, ages and attendance of the pupils in attendance at such school during the preceding year and from the time of the last preceding report to the time at which a report is required. . . . ." (*School Laws*, 1919, p. 71.)

English Language in Schools. *

"The medium of instruction in all secular subjects taught in all of the schools, public and private, within the state of Iowa, shall be the English language, and the use of any language other than English in secular subjects in said schools is hereby prohibited, provided, however, that nothing herein shall prohibit the teaching and studying of foreign languages as such as a part of the regular school course in any such school, in all courses above the eighth grade." (*School Laws*, 1919, p. 91.)

Truancy.

(*School Laws*, 1919 pp. 71–73.)

Child Labor.

(*School Laws*, 1919, pp. 107–108.)

History and Civics Must be Taught.

"All public and private schools located within the state of Iowa shall be required to teach the subject of American citizenship.

"The superintendent of public instruction shall prepare and distribute to all elementary schools an outline of American citizenship for all grades from one to eight inclusive.

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* See U. S. Supreme Court Decision on validity of this law, p. 159.

"Public and private high schools, academies, and other institutions ranking as secondary schools which maintain three year courses of instruction shall offer a minimum of instruction in American history and civics of the state and nation to the extent of two semesters, and schools of this class which have four year courses shall offer in addition one semester in social problems and economics.

"The superintendent of public instruction shall distribute to all high schools, academies, and institutions ranking as secondary schools, an outline of a course of study in American history, civics, of the state and nation, social problems and economics prepared under his direction." (*School Laws*, 1919, pp. 90–91.)

Normal Training in Private High Schools.

"For the purpose of increasing the facilities for training teachers for the rural schools, by requiring a review of such common branches as may be deemed essential by the superintendent of public instruction and for instruction in elementary pedagogy and the art of teaching elementary agriculture and home economics, provision is hereby made for normal courses of study and training in such four-year high schools as the superintendent of public instruction may designate; provided that such high schools shall be selected and distributed with regard to their usefulness in supplying trained teachers for the rural schools of all portions of the state, and with regard to the number of teachers required for rural schools in each portion of the state.

"Private and denominational schools are eligible to the provisions of this act, except as to receiving state aid." (*School Laws*, 1919, pp. 9–10.)

Physical Education in Teacher-Training Institutions.

"After September 1, 1923, every high school, state college, university or normal school giving teacher training courses shall provide a course or courses in physical education." (*Session Laws*, 1923, Chapter 68.)

Fire Drill.

"It shall be the duty of the state fire marshal and his deputies to require teachers of public and private schools, in all buildings of more than one story, to have at least one fire drill each month." (*School Laws*, 1919, p. 89.)

KANSAS

Exemption from Taxation.

"All property used exclusively for state, county, municipal, literary, educational, scientific, religious, benevolent and charitable purposes, ... shall be exempted from taxation." (*Constitution*, Art. XI, Sec. 1.)

No Public Funds for Sectarian Purposes.

"No religious sect or sects shall ever control any part of the common-school or university funds of the state." (*Constitution*, Art. VI, Sec. 8.)

Compulsory Attendance.

"Every parent, guardian, or other person in the state of Kansas, having control over or charge of any child who has reached the age of seven years and is under the age of sixteen years, shall require such child to attend continuously a public school or a private, denominational or parochial school taught by a competent instructor, in which all instruction shall be given in the English language only, each school year, for such period as the public school of the district in which the child resides is in session." (*School Laws*, 1923, p. 20.)

Truancy.

(*School Laws*, 1923, pp. 20–22.)

Child Labor.

(*School Code*, 1920, pp. 50–52.)

Use of English in Schools. Subjects to be Taught. Power of Visitation.

"All elementary schools in this state, whether public, private or parochial, shall use the English language exclusively as the medium of instruction.

"All schools, public, private, or parochial, shall provide and give a complete course of instruction to all pupils, in civil government, and United States history, and in patriotism and the duties of a citizen, suitable to the elementary grades.

"The State Board of Education shall have the power of visitation to see that the provisions of this act are complied with, and if it be found that any provision of this Act is being violated, the state board shall order such school forthwith to comply with this act, and if such order be not complied with within thirty days after such order, excluding vacation periods, then the state board shall be authorized to order such school to be closed, and the county attorney of the county, where such school is located, or the attorney general of the state of Kansas, at the election of the State Board of Education, shall enforce the orders of the board by action in the name of the state on his relation or the relation of such board of education." (*School Code*, 1920, p. 197.)

Accrediting High Schools.

"The State Board of Education shall have exclusive and sole authority to define official standards of excellence in all matters relating to the administration, course of study, and instruction in rural schools, graded schools, and high schools, and to accredit those schools in which the specified standards are maintained; and the board may grant to accredited schools an appropriate certificate or other evidence of approval." (*School Code*, 1920, p. 232.)

Graduates of Accredited High Schools.

"Any person who shall complete a four-year course of study in any high school accredited by the State Board of Education shall be entitled to admission to the freshman class of the State University, the State

Agricultural College, or any of the state normal schools, on presenting a statement containing a transcript of his high school record signed by the principal of the school and certifying that such person has satisfactorily completed said course of study." (*School Code*, 1920, pp. 232–233.)

Accrediting Colleges.

"Upon application of any college or university, or educational institution of like standing, incorporated under the general laws of the state of Kansas, and requiring a four-year high-school course or its equivalent, approved by the State Board of Education, as a condition of admission to its freshman class, the State Board of Education shall have the power to examine the course of study prescribed and the character of the work done by it, and if in the judgment of said board the course of study and the character of the work done shall be of such standing as to prepare the graduates of such institution to teach successfully in the public schools of this state, and if said institution maintains a department of education and the course of study prescribed includes work in said department satisfactory to the State Board of Education, the board shall place such institution on the accredited list." (*School Code*, 1920, pp. 37–38.)

Inspection of Accredited Institutions.

"Any institution on the accredited list shall be subject to examination by the State Board of Education at its pleasure with respect to its course of study, its equipment, and the character of its work; and additional requirements may be made at the pleasure of the board. Any institution failing to maintain a standard satisfactory to the State Board of Education shall be dropped from the accredited list." (*School Code*, 1920, p. 38.)

Normal Courses in High Schools.

"That for the purpose of affording increased facilities for the professional training of those preparing to teach, and particularly those who are to have charge of our rural schools, the State Board of Education shall make provisions for normal courses of study and for normal training in such high schools as said Board of Education shall designate: Provided, that said high schools shall be selected and distributed with regard to their usefulness in supplying trained teachers for schools in all portions of the state and with regard to the number of teachers required for the schools in each portion of the state.

"Accredited academies are eligible to the operation of this act, except as to receiving state aid." (*School Code*, 1920, pp. 210–211.)

Display of the Flag.

"That it shall be the duty of the school directors or boards of education of every public or proprietor of a private or parochial school in the several cities, counties, districts and school districts of this state to purchase a suitable United States flag, flagstaff and the necessary appliances therefor, and to display such flag upon or near the public, private or parochial school building or grounds belonging thereto in which school is held during school hours, and at such other times as such school directors, boards of education or proprietors may direct.

"That it shall be the duty of the said school directors, or boards of education of every public or proprietor of a private or parochial school in the several cities, counties, districts and school districts of this state to purchase a suitable United States flag for each and every room of their respective school building or buildings and to keep such United States flag or flags in display in each such school room or rooms during the school hours and at such other times as such school directors or boards of education may direct.

"That the said school directors or boards of edcuation or proprietor of a private or parochial school shall establish rules and regulations for the proper custody, care and display of the said United States flag, and, when the weather will not permit it to be otherwise displayed, it shall be placed conspicuously in the principal room in the schoolhouse." (*School Code*, 1920, p. 212.)

Use of Public School House.

"The district board shall have the care and keeping of the schoolhouse and other property belonging to the district. They are hereby authorized to open the school house for the use of religious, political, literary, scientific, mechanical, or agricultural societies, or societies for the suppression of crime belonging to their district, for the purpose of holding the business or public meetings of said societies, under such regulations as the school board may adopt." (*School Code*, 1920, p. 134.)

KENTUCKY

Right to Attend Private School.

"No man shall be compell d to send his child to any school to which he may be conscientiously opposed." (*Constitution*, Sec. 5.)

Exemption from Taxation.

"There shall be exempt from taxation . . . . institutions of purely public charity, and institutions of education not used or employed for gain by any person or corporation, and the income of which is devoted solely to the cause of education . . . ." (*Constitution*, Sec. 170.)

No Public Funds for Sectarian Purposes.

"No portion of any fund or tax now existing, or that may hereafter be raised or levied for educational purposes, shall be appropriated to, or used, by or in aid of, any church, sectarian or denominational school." (*Constitution*, Sec. 189.)

Compulsory Attendance.

"Every parent, guardian or other person residing within the boundaries of any county school district and having the custody, control or supervision of any child or children to be enrolled in and to attend regularly some common, private or parochial school each school year for the full term of such school, provided that in the case of a private or parochial school the term shall not be for a shorter period in each year than the term

of the common school of the district of the child's or children's residence, and that the teacher or teachers and the course of study of such private or parochial school shall have been approved by the State Board of Education, and that reports of the attendance of all children enrolled in such private or parochial school shall be submitted by such private or parochial school in the same manner as required of common schools; . . . . .

"Every parent, guardian or other person in any city of the first, second, third or fourth class, having the custody, control or supervision of any child or children between the ages of seven (7) and sixteen (16) years, shall cause such child or children to be enrolled in and to attend regularly some public, private or parochial school each year for the full term of such school, provided that in the case of a private or parochial school, etc. (as above) . . . .

"Every child between fourteen (14) and sixteen (16) years of age to whom an employment certificate shall have been issued and who is lawfully and steadily employed and who has not satisfactorily completed the course of study corresponding to the first eight (8) years of the public schools, shall attend a continuation school when established for not less than four (4) nor more than eight (8) hours each week throughout the regular term of the public schools, between the hours of eight (8) a. m. and five (5) p. m., but in no case on Saturday afternoon or on Sunday.

"It shall be the duty of the teacher at the end of each week to report the name and the age of each and every child residing in her school subdistrict who fails to attend school as herein prescribed to the attendance officer immediately to investigate said case or cases . . . . ." (*School Laws*, 1920, pp. 29–31.)

Child Labor.

(*School Laws*, 1918, pp. 170–179.)

Use of Public School House.

"When a responsible person of any subdistrict may apply to any subdistrict trustee for the use of a schoolhouse, to be used when the school is not in session, during the school hours or vacations, by any lawful assembly of educational, religious, agricultural, political, civic or social bodies, organizations or gatherings, and if said subdistrict trustee refuse the use of the same, then the said trustee shall state his cause for refusal in writing, and if a demand, signed by five free-holders of said subdistrict, be presented to said subdistrict trustee, then he shall deliver or cause to be delivered, the keys of said school house, to such freeholder, who shall be responsible for the use and care of said school property and of avoidable damages and the return of the key to the teacher of said district, if school be in term session, or to the subdistrict trustee during vacations." (*School Laws*, 1918, pp. 6–7.)

Teaching the Constitution.

"In all public and private schools located within the state of Kentucky, commencing with the school year next ensuing after the passage of this Act, there shall be given regular courses of instruction in the Constitution of the United States.

"Such instruction in the Constitution of the United States shall begin not later than the opening of the eighth grade, and shall continue in the high school course, and in courses in state colleges, universities and the educational departments of state and municipal institutions to an extent to be determined by the Superintendent of Public Instruction." (*Laws Relating to Education in Kentucky*, 1924, pp. 25–26.)

LOUISIANA

No Public Funds for Private Schools.

"No public funds shall be used for the support of any private or sectarian school." (*Constitution*, Art. XII, Sec. 13.)

Exemption from Taxation.

"The following property, and no other, shall be exempt from taxation:

"Places of religious worship; . . . . property devoted to charitable undertakings, including that of such organizations as lodges and clubs organized for charitable and fraternal purposes and practicing the same; schools and colleges; but the exemption shall extend only to property, and grounds thereunto appurtenant, used for the above mentioned purposes and not leased for profit or income." (*Constitution*, Art. X, Sec. 4.)

Privileges of Approved Private Schools and Colleges.

The State Board of Education "shall have authority to approve private schools and colleges, whose sustained curriculum is of a grade equal to that prescribed for similar public schools and educational institutions of the state; and the certificates or degrees issued by such private schools or institutions so approved shall carry the same privileges as those issued by the state schools and institutions." (*Constitution*, Art. XII, Sec. 7.)

Branches in Elementary Schools.

"There shall be taught in the elementary schools only fundamental branches of study, including instruction upon the constitutional system of state and national government and the duties of citizenship." (*Constitution*, Art. XII, Sec. 3.)

Compulsory Attendance.

"Every parent, guardian or other person residing within the state of Louisiana having control or charge of any child or children between the ages of seven and fourteen years both inclusive, shall send such child or children to a public or private day school." (*Session Laws*, 1922, p. 242.)

Combining of Public Schools with Private Schools of a Religious Character Prohibited.

"The school boards of the several parishes of this state are prohibited from entering into any contract, agreement, understanding or combination, tacitly or expressly, directly or indirectly, with any church,

monastic or other order or association of any religious sect or denomination whatsoever, or with the representatives thereof, or with any person or corporation conducting a school which solicits patronage from those of any particular religious faith, affiliation or persuasion, for the purpose of running any public school or schools of this state together or in connection or in combination with any private or parochial school, or other institution of learning which may be under the control or management of any church, monastic or other religious order or association of any religious sect or denomination whatsoever, or under the control of any person or corporation conducting a school which solicits patronage especially from those of any particular religious faith, affiliation or persuasion." (*Public School Laws*, 1919, pp. 130–131.)

Teacher-Training Course.

"The State Board of Education shall have authority to prescribe teacher-training courses for public or private schools doing work of at least two years in advance of that done by the public high schools, and to issue first grade certificates, without examination, to the graduates of such courses." (*Session Laws*, 1922, p. 208.)

MAINE

Rights of Religious Societies.

"All religious societies in this state, whether incorporate or unincorporated, shall at all times have the exclusive right of electing their public teachers, and contracting with them for their support and maintenance." (*Constitution*, Art. I, Sec. 3.)

Compulsory Attendance.

"Every child between the seventh and fifteenth anniversaries of his birth and every child between the fifteenth and seventeenth anniversaries who cannot read at sight and write legibly simple sentences in the English language and every child between the fifteenth and sixteenth anniversaries who has not completed the sixth grade of the elementary school, shall attend some public day school during the time such shcool is in session, and an absence therefrom of one-half day or more shall be deemed a violation of this requirement; *Provided*, that necessary absence may be excused by the superintending school committee or superintendent of schools or teachers acting by the direction of either; provided, also, that such attendance shall not be required if the child obtained equivalent instruction, for a like period of time, in a private school in which the course of study and methods of instruction have been approved by the state superintendent of public schools, or in any other manner arranged for by the superintending school committee with the approval of the state superintendent of public schools; *provided further*, that children shall not be credited with attendance at a private school until a certificate showing their names, residence and attendance at such school signed by the person or persons having such school in charge shall be filed with the school officials of the town in which said children reside." (*School Code*, 1923, p. 33.)

Truancy.

(*School Code*, 1923, pp. 34–36.)

Child Labor.

(*School Code*, 1923, pp. 91–95.)

State Commissioner of Education to Prescribe Studies of Approved Private Schools. Use of English. Instruction in American History and Government.

It is the duty of the State Commissioner of Education "to prescribe the studies to be taught in the public schools and in private schools approved for attendance and tuition purposes, reserving to superintending school committees, trustees or other officers in charge of such public or private schools the right to prescribe additional studies, and the course of study prescribed by the state superintendent of public schools shall be followed in all public schools and in all private schools approved by the state superintendent for attendance or tuition purposes; provided, however, that upon the approval by the state superintendent of any course arranged by the superintending school committee of any town, or by the trustees or other officers of any private school, said course shall be the authorized course for said town or private school; provided, further, that the basic language of instruction in the common school branches in all schools, public and private, shall be the English language; and provided, further, that American history and civil government shall be taught in all common schools of elementary and high school grades, both public and private, and that American history and civil government shall be required for graduation from all grammar schools, both public and private. Nothing in this section shall be construed to prohibit the teaching in elementary schools of any language as such." (*School Code, 1923*, p. 54.)

State Aid to Academies. Conditions of Same.

"Whenever it shall be made to appear to the governor and council, from returns made as herein provided, that any incorporated academy in the state is prepared to give instruction equivalent to that required by law to be given in free high schools, that the pupils attending the said academy are qualified to receive such instruction, and that the teachers in the said academy have the qualifications fitting them to give instruction in secondary school studies, such academy shall be entitled to receive annually from the state a sum not exceeding five hundred dollars, in case it maintains an English secondary school course of study as prescribed by the state superintendent of public schools, or a sum not exceeding seven hundred and fifty dollars in case it maintains in addition to an English course a college preparatory course, or a sum not exceeding one thousand dollars in case it maintains an English course, a college preparatory course and a training course for teachers; provided, that the courses of study herein named shall be subject to the approval of the state superintendent of public schools, and provided, that the amount paid by the state to any academy under this section shall be expended by the said academy for instruction during the year for which payment is made, and shall not exceed the total income of the said academy from all other sources; and provided, further, that in addition to the amount received from the state, a sum equal thereto shall be expended for instruction and maintenance of the academy

during said year; and provided, further, that every academy receiving money from the state under this section shall provide instruction as contemplated by this section for not less than thirty weeks in each year; and provided, further, that no academy shall be credited with maintaining a course of study under this section unless the said academy shall have an average of not less than twelve students in said course." (*School Code*, 1923, pp. 46–47.)

"No academy shall receive state aid under section ninety-eight (quoted above) if said academy has an annual income from invested funds exceeding two thousand dollars; and no academy shall receive state aid to exceed five hundred dollars in any given year provided the said academy has an annual income from invested funds exceeding one thousand dollars; provided, however, that any academy with a larger average attendance than two hundred shall receive such aid not to exceed one thousand dollars if its annual income from invested funds, after deducting interest paid on its indebtedness, does not exceed two thousand dollars." (*School Code*, 1923, p. 47.)

"Every educational institution receiving state aid, and the officers and teachers of every academy receiving money from the state, and of every academy or private school approved for attendance or tuition purposes, shall annually, on or before the first day of August, report to the state superintendent of public schools the total and average attendance, an account of the moneys received and expended during the preceding year, the number of instructors, and such schools as are approved for state aid or tuition purposes and shall report such other items as he may require. Such reports shall be published in the annual report of the state superintendent of public schools. Every such educational institution failing to comply with the above requirements shall forfeit whatever aid or assistance it would otherwise receive from the state. Wherever the word 'academy' occurs, it shall be construed to include 'seminary or institute'." (*School Code*, 1923, p. 48.)

State Aid for Maintaining Manual Training in High School or Academy.

"The superintending school committee having charge of any free high school, or the trustees of any incorporated academy may provide for instruction therein in the principles of agriculture and the domestic and mechanic arts. Whenever it shall be made to appear to the governor and council, from returns made as herein provided, that in any free high school or academy instruction has been furnished during the preceding year in the principles of agriculture, the mechanic arts or domestic science, the governor and council shall direct the treasurer of state to pay to the town supporting such free high school or to the treasurer of such academy in addition to other state aid if any, a sum equal to two-thirds the total expenditure for instruction in each of said courses; provided, however, that no school shall receive a total in excess of seven hundred and fifty dollars in any one year for the support of said courses; and, provided that state aid shall not be allowed for any course which has an average attendance of less than twelve students; and, provided further, that such aid shall not be granted unless the course of study, equipment and qualifications of instructors shall first have been approved by the state superintendent of public schools." (*School Code*, 1923, p. 59.)

MARYLAND

Approval of Private Institutions.

"Nor shall any public or private educational institution issue any certificate, diploma, or academic, collegiate, professional, or university degree without having first obtained the assent of the State Board of Education and approval of said board of the conditions of entrance, scholarship, and residence upon which said certificate, diploma, or degree is issued." (*School Code*, 1922, pp. 11–12.)

Private Institutions to Report.

"The State Board of Education shall require, with and on the advice of the State Superintendent of Schools, all private educational associations, corporations, or institutions to report annually, on or before the thirty-first day of August, as to enrollment and courses of study on such forms as the State Board of Education may provide." (*School Code*, 1922, p. 13.)

Singing the "Star Spangled Banner."

"It shall be the duty of every principal, head-master, dean or other person in charge of any grammar school, high school, normal school, private school, preparatory school, college or university in the State of Maryland, giving an academic course, who have morning, afternoon, or evening exercises or other gatherings, to open such exercises or gatherings, on at least one day of such school week, whether morning, afternoon, or evening, with the singing of the 'Star Spangled Banner'; provided, that nothing in this Act shall apply to professional schools." (*School Code*, 1922, pp. 32–33.)

Truancy.

(*School Code*, 1922, pp. 105–107.)

Record of Absence.

"It shall be the duty of the principal or head teacher of every public or private school in this State to report immediately to the school commissioners of the county where such school is located, or of Baltimore City, if located therein, or to an attendance officer or other official designated by such commissioners, the names of all children enrolled in his or her school who have been absent or irregular in attendance three days, or their equivalent, without lawful excuse, within a period of eight consecutive weeks." (*School Code*, 1922, pp. 106–107.)

Compulsory Attendance.

"Every child residing in Baltimore City between seven and fourteen years of age shall attend some school regularly . . . . during the entire period of each year, the public day schools in said city in which said child resides are in session, unless it can be shown that the child is elsewhere receiving regularly thorough instruction during said period in the studies usually taught in the said public schools to children of the same age." (*School Code*, 1922, p. 103.)

"Every child, residing in any county of the State, being seven years of age, and under thirteen years of age, shall attend some public school

during the entire period of each year that the public schools of the county are in session; unless it can be shown to the county superintendent of schools that such child is elsewhere receiving regular and thorough instruction during such period in the studies usually taught in the public schools of the county children of the same age." (*School Code*, 1922, p. 107.)

MASSACHUSETTS

No Public Funds for Sectarian Purposes.

". . . . and no grant, appropriation or use of public money or property or loan of public credit shall be made or authorized by the commonwealth or any political division thereof for the purpose of founding, maintaining or aiding any school or institution of learning, whether under public control or otherwise, wherein any denominational doctrine is inculcated, or any other school, or any college, infirmary, hospital, institution, or educational, charitable or religious undertaking which is not publicly owned and under the exclusive control, order and superintendence of public officers or public agents authorized by the commonwealth or federal authority or both . . . ." (*Constitution*, Art. XLVI.)

Compulsory Attendance. Approval of Private Schools.

"Every child between seven and fourteen, every child under sixteen who does not meet the requirements for the completion of the sixth grade of the public schools of the town where he resides, and every child under sixteen except a child holding an employment certificate and employed in some regular employment or business for at least six hours per day, and except a child having the written permission of the superintendent of schools of the town where he resides to engage in profitable employment at home, shall, subject to section fifteen, attend a public day school in said town or some other day school approved by the school committee, during the entire time the public schools are in session, unless the child attends school in another town, during the entire time the same is in session; but such attendance shall not be required of a child whose physical or mental condition is such as to render attendance inexpedient or impracticable, or who is being otherwise instructed in a manner approved in advance by the superintendent or the school committee. The superintendent, or teachers in so far as authorized by him or by the school committee, may excuse cases of necessary absence for other causes not exceeding seven days sessions or fourteen half day sessions in any period of six months. For the purpose of this section, school committees shall approve a private school only when the instruction in all the studies required by law is in English, and when satisfied that such instruction equals in thoroughness and efficiency, and in the progress made therein, that in the public schools in the same town; but they shall not withhold such approval on account of religious teaching." (*General Laws Relating to Education*, 1921, pp. 73–74.)

Continuation Schools.

Every city or town in which 200 or more minors under sixteen are regularly employed not less than six hours a day shall, and any other city or town may, establish continuation schools or courses. Minors employed

in vacation are not to be counted. When the school is established the city or town shall require attendance of minors under sixteen who are lawfully employed, but instruction in regular schools may be substituted. Required attendance is to be not less than four hours per week; and not less than 20 hours per week in case of holders of employment certificates who are temporarily unemployed. (*General Laws Relating to Education*, 1921, pp. 35–36.)

Attendance of Illiterates.

"Every illiterate minor between sixteen and twenty-one, except a married woman, shall attend some public evening school, if any, in the town of his residence, for the whole time during which the public evening schools are in session, unless he attends a public day school, or a private school approved as provided in section one by the school committee." (*General Laws Relating to Education*, 1921, p. 74.)

Registration Reports.

"The supervisory officers of all private schools shall, within thirty days after the enrollment or registration of any child of compulsory school age, report his name, age and residence to the superintendent of schools of the town where the child resides; and whenever a child withdraws from a private school, such officers shall, within ten days, notify said superintendent." (*General Laws Relating to Education*, 1921, p. 50.)

Statistical Reports.

"It (the department of education) shall prepare . . . . and annually, on or before May tenth, send to every literary, scientific or professional institution of learning in the commonwealth, and every reform school or alms house, blank forms of inquiry for such statistics as it may prescribe, relative to the number of pupils and instructors, courses of study, cost of tuition and the general condition of the institution or school. The trustees, officers or persons in charge thereof shall annually, on or before June first, return the same with the information required." (*General Laws Relating to Education*, 1921, pp. 16–17.)

Truancy.

(*General Laws Relating to Education*, 1921, pp. 78–82.)

Child Labor.

(*General Laws Relating to Education*, 1921, pp. 108–127.)

Use of Public Schoolhouse.

"For the purpose of promoting the usefulness of public school property the school committee of any town may conduct such educational and recreational activities in or upon school property under its control, and, subject to such regulations as it may establish, and, consistently and without interference with the use of the premises for school purposes, shall allow the use thereof by individuals and associations for such educational, recreational, social, civic, philanthropic and like purposes as it deems for the interest of the community. This section shall not apply to Boston." (*General Laws Relating to Education*, 1921, p. 48.)

MICHIGAN

No Public Funds for Sectarian Purposes.

"No money shall be appropriated or drawn from the treasury for the benefit of any religious sect or society, theological or religious seminary; nor shall property belonging to the state be appropriated for any such purpose." (*Constitution*, Art. II, Sec. 3.)

Compulsory Attendance.

"Every parent, guardian or other person in the state of Michigan, having control and charge of any child between the ages of seven and sixteen years shall be required to send such child, equipped with the proper textbooks necessary to pursue his or her school work, to the public schools during the entire school year, and such attendance shall be continuous and consecutive for the school year fixed by the district in which such parent, guardian or other person in parental relation may reside . . . . Provided, That in the following cases children shall not be required to attend the public schools:

"Any child who is attending regularly and is being taught in a private or parochial school which has complied with all the provisions of this act and teaches such branches as are taught in the public schools to children of corresponding age and grade as determined by the course of study for the public schools of the school district within which such private or parochial school is located, or who, upon the completion of the work in such schools, shall present satisfactory evidence to the county commissioner of schools, or in appropriate cases, to the superintendent of schools, that he has completed sufficient work to entitle him to an eighth grade diploma." (*General School Laws*, 1923, p. 179.)

Supervision and Inspection of Private Schools. Certification of Private School Teachers. Penalties.

"SEC. 1—The superintendent of public instruction is hereby given supervision of all private, denominational and parochial schools of this state in such matters and manner as is hereinafter provided. He shall employ such assistants and employes as may be necessary to comply with the provisions hereof and fix the compensation therefor; the number of assistants and employes and the compensation payable thereto being subject to the approval of the state administrative board. Such salaries and expenses shall be paid by the treasurer of the state of Michigan upon the warrant of the auditor general from the fund as herein designated, at such time and in such manner as other state officers and employes are paid. The superintendent of public instruction shall have the authority to remove any appointee under this act at any time that he may deem such removal advisable. It is the intent of this act that the sanitary conditions of such school, the courses of study therein, and the qualifications of the teachers thereof shall be of the same standard as provided by the general school laws of the state.

"SEC. 2—A private, denominational or parochial school within the meaning of this act shall be any school other than a public school giving instruction to children below the age of sixteen years, in the first eight grades as provided for the public schools of the state, such school not being

under the exclusive supervision and control of the officials having charge of the public schools of the state.

"SEC. 3—No person shall teach or give instruction in any of the regular or elementary grade studies in any private, denominational or parochial school within this state who does not hold a certificate such as would qualify him or her to teach in like grades of the public schools of the state; Provided, however, That any person who shall have taught in any elementary school or schools of the standard specified in this act for a period of ten years or more preceding the passage of this act, shall, upon filing proof of service with the superintendent of public instruction, be entitled to a certificate by said superintendent of public instruction in such form as he shall prescribe, to teach in any of the said schools within the state: Provided further, That teaching in such schools shall be equivalent to teaching in the public schools for all purposes in obtaining a certificate: Provided further, That the teachers affected by this act may take any examination as now provided by law and that the superintendent of public instruction may direct such other examinations at such time and place as he may see fit. In all such examinations two sets of questions shall be prepared in subjects ordinarily written on Saturday, one of which sets shall be available for use on Wednesday by applicants who observe Saturday as their Sabbath: Provided further, That any certificate issued under or by virtue of this act shall be valid in any county in this state for the purpose of teaching in the schools operated under this act: Provided further, That any person holding a certificate issued by the authorities of any recognized or accredited normal school, college or university of this or other state shall be entitled to certification as now provided by law: Provided, however, That teachers employed in such private, denominational or parochial schools when this act takes effect shall have until September first, nineteen hundred twenty-five, to obtain a legal certificate as herein provided.

"SEC. 4—In event of any violation of this act the superintendent of public instruction shall serve the person, persons, corporation, association or other agencies who operate, maintain and conduct a private, denominational or parochial school within the meaning of this act with a notice, time and place of hearing, such hearing to take place within fifteen days after the date of said notice and at a place located in or conveniently near the county where such violation took place, accompanied by a copy of the complaint stating the substance of said violation: Provided, That no person shall be called to attend any such hearing on any day observed by him as the Sabbath. If at such hearing the superintendent of public instruction shall find that the violation complained of has been established he shall then serve such person, persons, corporation, association or other agencies with an order to comply with the requirements of this act found to have been violated within a reasonable time not to exceed sixty days from the date of such order: Provided, That in the event that such order refers to sanitary conditions that the said person, persons, corporation, association or other agencies shall have six months in which to remedy the defect. If the order of the superintendent of public instruction as specified in said notice shall not have been obeyed within the time specified herein said superintendent of public instruction may close said school and prohibit said person, persons, corporation, association or other agencies operating

or maintaining such private, denominational or parochial school from maintaining said school or from exercising any of the functions hereunder until said order of the superintendent of public instruction has been complied with. The children attending a private, denominational or parochial school refusing to comply with the requirements hereof after proceedings herein set forth shall be compelled to attend the public schools or approved private, denominational or parochial school under the provisions of the compulsory education act, the same being act number two hundred of the public acts of nineteen hundred five, as amended. And it shall be the duty of the person or persons having charge of the enforcement of the said compulsory education act, upon notice from the superintendent of public instruction that said private, denominational or parochial school has not complied with the provisions hereof, to compel the attendance of the children of said school or schools at the public schools, or approved private, denominational or parochial school.

"SEC. 5—The superintendent of public instruction by himself, his assistants, or any duly authorized agent, shall have authority at any time to investigate and examine into the conditions of any school operating under this act as to the matters hereinbefore set forth and it shall be the duty of such school to admit such superintendent, his assistants or authorized agents and to submit for examination its sanitary condition, the records of enrollment of pupils, its courses of studies as set forth in section one of this act and the qualifications of its teachers. Any refusal to comply with provisions herein on the part of such school or teacher shall be considered sufficient cause to suspend the operation of said school after proceedings taken as stated in section four of this act.

"SEC. 6—Appropriation clause.

"SEC. 7—Nothing in this act contained shall be construed so as to permit any parochial, denominational, or private school to participate in the distribution of the primary school fund." (*General School Laws*, 1923. pp. 112–115.)

Requirements for Teachers' Certificates.

(*General School Laws*, 1923, pp. 115–22).

Only Citizens May be Granted Teachers' Certificates.

"No certificate qualifying a person to teach in the public schools of this state shall be granted to any person who is not a citizen of the United States or who has not declared his intention of becoming a citizen. Any certificate granted in contravention of the provisions of this act shall be void. Also it shall be unlawful for the board of control having in charge any State institution of learning to employ therein regularly as a teacher or in any other capacity any person who is not a citizen of the United States: Provided, however, That this requirement shall not apply to persons who are thus actively employed when this act takes effect; Provided further, That this requirement shall not be construed as prohibiting such boards of control from employing for limited periods instructors or lecturers who are citizens of foreign countries." (*Session Laws*, 1919, No. 220.)

Truancy.

(*General School Laws*, 1923, pp. 181–184.)

Child Labor.

(*General School Laws*, 1923, pp. 193–195.)

Use of English in Schools.

"All instruction from the first to the eighth grade inclusive in those subjects required for an eighth grade diploma, in all the schools of this state, public and private and parochial . . . shall be conducted in the English language; . . . . this provision shall not be construed as prohibiting religious instruction in private or parochial schools given in any language in addition to the regular course of study." (*General School Laws*, 1923, p. 11.)

Teaching the Constitution.

"In all public and private schools located within the State of Michigan, commencing with the school year 1921, there shall be given regular courses of instruction in the constitution of the United States and in the constitution of the State of Michigan.

"Such instruction in the constitution of the United States and the constitution of Michigan, shall begin not later than the opening of the eighth grade, and shall continue in the high school course to an extent to be determined by the superintendent of public instruction." (*General School Laws*, 1923, pp. 104–105.)

Continuation School.

"When a school district shall have established said (continuation) schools or courses it shall require the attendance thereat of every minor under eighteen years of age residing within the confines of said school district, who has ceased to attend all-day school and who has not completed a four-year high school course or its equivalent, provided that said minors may be excused from the provisions of this section, for the same reasons and under the same conditions as children under fifteen years of age may now be excused from the provisions of the compulsory education law: Provided further, that the provisions of this act shall not apply to employed minors who shall have reached the age of sixteen years prior to September one, nineteen hundred twenty. The required attendance provided for in this act shall be at the rate of not less than eight hours per week, and shall be between the hours of eight o'clock in the morning and five-thirty o'clock in the afternoon of any working day or days, except that it shall not be Saturday afternoon." (*School Laws of Michigan*, 1919, pp. 41–42.)

Education of Aliens and Illiterates.

"The superintendent of public instruction is hereby authorized, with the cooperation of the boards of education of the school districts of this state, to provide for the education of aliens and of native illiterates over the age of eighteen years residing in said districts, who are unable to read, write and speak the English language and who are unlearned in the principles of the government of this state and the United States. All instruction given under this act shall be in the English language and shall be conducted by persons whose general qualifications and training are approved by the superintendent of public instruction." (*Session Laws*, 1923, No. 124.)

Fire Drill.

"Teachers are required to have at least one fire drill each month and must keep all doors and exits unlocked during school hours." (*School Laws of Michigan*, 1919, p. 27.)

Use of Public Schoolhouse.

"The school board of any city, village, township or school district upon the written application of any responsible organization located in the district, or a group of at least seven citizens of the district must grant the use of all school grounds and school houses as community or recreation centers for the entertainment and education of the people, including the adults and children of school age, and for the discussion of all topics tending to the development of personal character and of civic welfare. Such use cannot seriously interfere with the original and necessary use of such property. The school board must make such rules and regulations as will give a fair, reasonable and impartial use of the property." (*School Laws of Michigan*, 1919, p. 17.)

MINNESOTA.

No Appropriation for Sectarian Purposes.

"But in no case shall the moneys derived as aforesaid, or any portion thereof, or any public moneys or property, be appropriated or used for the support of schools wherein the distinctive doctrines, creeds or tenets of any particular Christian or other religious sect are promulgated or taught." (*Constitution*, Article VIII., Sec. 3.)

Exemption from Taxation.

"Taxes shall be uniform upon the same class of subjects, and shall be levied and collected for public purposes, but . . . . academies, colleges, universities, and all seminaries of learning, all churches, church property, and houses of worship, institutions of purely public charity . . . . shall be exempt from taxation." (*Constitution*, Art. IX, Sec. 1.)

Compulsory Attendance. Reports Required.

"Every child between eight and sixteen years of age shall attend a public school, or a private school, in each year during the entire time the public schools of the district in which the child resides are in session . . . . " (*School Code*, 1919, p. 72.)

"A school, to satisfy the requirements of compulsory attendance, must be one in which all the common branches are taught in the English language, from text-books written in the English language and taught by teachers qualified to teach in the English language. A foreign language may be taught when such language is an elective or a prescribed subject of the curriculum, but not to exceed one hour in each day." (*School Code*, 1919, p. 72.)

"It shall be the duty of the principal teacher or other person in charge of any private school to make reports at such times and containing such information as is herein required, respecting public schools. Such

reports shall be made to the county superintendent of schools in whose county such private school is located, except where such private school is located in a city or in a district maintaining a high school, or a graded school, such reports shall be made to the city superintendent of schools or to the superintendent or principal of the high or grade school." (*School Code*, 1919, p. 73.)

Truancy.

(*School Code*, 1919, p. 74.)

Child Labor.

(*School Code*, 1919, pp. 75–78.)

Public School Children Excused from Class to Attend Religious Instruction.

A child may be excused from attendance at a public school if "it is the wish of such parent, guardian, or other person having control of any child, that he attend for a period or periods not exceeding in the aggregate three hours in any week, a school for religious instruction, conducted and maintained by some church or association of churches, or any Sunday school association incorporated under the laws of this state, or any auxiliary thereof, such school to be conducted and maintained in a place other than a public school building, and in no event, in whole or in part, at public expense." (*Session Laws*, 1923, Chapter 78.)

Instructions in the Constitution.

"In the eighth grade and in the high school grades of all public schools, and in the corresponding grades in all other schools within the state of Minnesota, and in the educational departments of state and municipal institutions there shall be given regular courses of instruction in the Declaration of Independence and the Constitution of the United States, to an extent to be determined by the State Commissioner of Education." (*Session Laws*, 1923, Chapter 291.)

Physical Education in Teacher-Training Institutions.

"All colleges, schools and other educational institutions in this state giving teacher-training shall provide a course or courses in physical and health education, training and instruction and every pupil attending any such college, school or educational institution in preparation for teaching service shall take such course or courses.

"The Commissioner of Education shall supervise the administration of this act and shall prescribe the necessary course or courses in physical and health education, training and instruction, and make such rules and regulations, and prepare or cause to be prepared, published and distributed any such manual or manuals of instructions, or course or courses of study, or other matter as he may deem necessary or suitable to carry out the provisions thereof.

"The State Board of Education shall appoint at a salary of not to exceed $3,000.00 per annum a state director of physical and health education and training, competent and qualified to, and who shall under the

direction of the Commissioner of Education, administer, supervise and direct the program of physical and health education and training; provided for by this act." (*Session Laws*, 1923, Chapter 323.)

Use of Schoolhouse.

The school board may "authorize the use of any schoolhouse in the district for divine worship, Sunday schools, public meetings, elections and such other similar purposes as, in their judgment, will not interfere with its use for school purposes." (*School Code*, 1919, p. 29.)

MISSISSIPPI

No Appropriation for Sectarian Purposes.

"No religious or other sect, or sects, shall ever control any part of the school or other educational funds of this state; nor shall any funds be appropriated toward the support of any sectarian school; or to any school that at the time of receiving such appropriation is not conducted as a free school." (*Constitution*, Art. VIII, Sect. 208.)

Compulsory Attendance.

"On and after August 1, 1920, every parent, guardian or other person in the state of Mississippi having control or charge of any child or children between the ages of seven and fourteen years of age inclusive, shall be required to send such child or children to public day school or to a private, denominational or parochial day school taught by a competent instructor, and such child or children shall attend school for at least eighty (80) days during each and every scholastic year; provided that the period of compulsory attendance for each school shall commence at the beginning of the school, unless otherwise ordered by a board of trustees of a municipal separate school distirct for the schools of that district, or by the county school board for other schools in the county coming under the provisions of this act." (*School Code*, 1918–20, Part II, pp. 12–13.)

"All school officers including those in private, denominational or parochial schools in this state, offering instruction to pupils within the compulsory ages, are hereby required to make and furnish all reports that may be required by the state, and by the county superintendent of education, or by the trustees of any municipal separate school district, with reference to the working of this act." (*School Code*, 1918–20, Part II, pp. 14–15.)

MISSOURI

No Public Funds for Sectarian Purposes.

"Neither the General Assembly nor any county, city, town, township, school district or other municipal corporation, shall ever make an appropriation, or pay from any public fund whatever, anything in aid of any religious creed, church or sectarian purpose, or to help to support or sustain any private or public school, academy, seminary, college, university or other institution of learning, controlled by any religious creed, church,

or sectarian denomination whatever; nor shall any grant or donation of personal property or real estate ever be made by the state, or any county, city, town or other municipal corporation, for any religious creed, church or sectarian purpose whatever." (*Constitution*, Art. XI, Sec. 11.)

Exemption from Taxation.

"Lots in incorporated cities or towns, or within one mile of the limits of any such city or town, to the extent of one acre, and lots one mile or more distant from such cities or towns, to the extent of five acres, with the buildings thereon, may be exempted from taxation, when the same are used exclusively for religious worship, for schools, or for purposes purely charitable . . . ." (*Constitution*, Art. X, Sec. 6.)

Compulsory Attendance.

"Every parent, guardian or other person in this state having charge, control or custody of a child between the ages of seven and fourteen years, shall cause such child to attend regularly some day school, public, private, parochial or parish, not less than the entire time the school which said child attends is in session, or shall provide such child at home with such regular daily instruction during the usual hours as shall, in the judgment of a court of competent jurisdiction be substantially equivalent at least to the instruction given the children of like age at said day school in the locality in which said child resides; and every parent or person in this state having charge, control or custody of a child between the ages of fourteen and sixteen years, who is not actually and regularly and lawfully engaged for at least six hours each day in some useful employment or service, shall cause said child to attend regularly some day school, as aforesaid." (*Revised School Laws*, 1923, p. 120.)

Part-Time School.

"Whenever the board of education or board of directors of any school district in this state shall have established part-time instruction in continuation schools for children under sixteen years of age, lawfully engaged in any regular employment, all such children shall be required to attend such school not less than four hours a week between the hours of eight o'clock in the morning and five o'clock in the evening during the school year of such part-time classes; *provided, further*, that whenever the part-time classes, herein provided for, shall have been established in any school district, that all children who are under eighteen years of age, who have not completed the elementary school course in the public schools of Missouri, or its equivalent, and who are not attending regularly any day school shall be required to attend regularly such part-time classes not less than four hours a week between the hours of eight o'clock in the morning and five o'clock in the afternoon during the school year of such part-time classes." (*Revised School Laws*, 1923, p. 124.)

Child Labor.

(*Revised School Laws*, 1923, pp. 158–161.)

MONTANA

No Public Funds for Sectarian Purposes.

"Neither the legislative assembly, nor any county, city, town, or school district, or other public corporation, shall ever make, directly or indirectly, any appropriation, or pay from any public fund or moneys whatever, or make any grant of lands or other property in aid of any church, or for any sectarian purpose, or to aid in the support of any school, academy, seminary, college, university, or other literary, scientific institution, controlled in whole or in part by any church, sect or denomination whatever." (*Constitution*, Art. XI, Sec. 8.)

Exemption from Taxation.

". . . . and such other property as may be used exclusively for . . . . educational purposes, ... not used or held for private or corporate profit, ... may be exempt from taxation." (*Constitution*, Art. XII, Sec. 2.)

Compulsory Attendance.

"All parents, guardians, and other persons who have care of children, shall instruct them, or cause them to be instructed in reading, spelling, writing, language, English grammar, geography, history and civics, physiology and hygiene, and arithmetic. Every parent, guardian, or other person having charge of any child between the ages of eight and sixteen years, shall send such child to a public, private, or parochial school, for the full time that the school attended is in session, which shall in no case be for less than sixteen weeks during any current year." (*School Laws*, 1921–1922, p. 59.)

Truancy.

(*School Laws*, 1921–22, pp. 60–62.)

Normal Training in Accredited Schools.

"Any accredited high school in the state . . . . may establish normal training courses for rural school teachers, or junior college courses, or both." (*School Laws*, 1921–22, p. 99.)

Fire Drill.

"In all schools of the state, either public or private, in which thirty or more children are enrolled, it shall be the duty of the teacher or teachers therein employed to instruct the children under their immediate control and charge once each week during the school term in 'fire drill.'" (*School Laws*, 1921–22, p. 48.)

NEBRASKA

No Public Funds for Sectarian Purposes.

"No sectarian instruction shall be allowed in any school or institution supported in whole or in part by the public funds set apart for educational purposes, nor shall the state accept any grant, conveyance, or bequest of

money, lands or other property to be used for sectarian purposes. Neither the State Legislature nor any county, city or other public corporation, shall ever make any appropriation from any public fund, or grant any public land in aid of any sectarian or denominational school or college, or any educational institution which is not exclusively owned and controlled by the state or a governmental subdivision thereof. No religious test or qualification shall be required of teacher or student, for admission to or continuance in any public school or educational institutional institution supported in whole or in part by public taxation." (*Constitution*, Art. VII, Sec. 11.)

Exemption from Taxation.

". . . . and such other property as may be used exclusively . . . . for school, religious . . . . and charitable purposes, may be exempted from taxation." (*Constitution*, Art. IX, Sec. 2.)

Compulsory Attendance.

"In school districts other than city and metropolitan city school districts every person residing within the state of Nebraska who has legal or actual charge or control of any child not less than seven nor more than sixteen years of age, shall cause such child to attend regularly the public, private, denominational or parochial day schools for a period of not less than six months each year in which the public day schools of such school district are in session, unless such child has graduated from the high school maintained by the district in which he resides or from a high school of equal grade; or if no high school is maintained by the district in which it resides, has graduated from the school maintained in the district or from a school of equal grade. In city and metropolitan city school districts every person residing within the state of Nebraska who has legal or actual charge or control of any child not less than seven nor more than sixteen years of age, shall cause such child to attend regularly the public, private, denominational or parochial day schools for the entire time each year in which the public day schools of such school district are in session, unless such child has graduated from the high school maintained by the district in which he resides or from a high school of equal grade. Provided, that in any city school district the attendance of such child at any time during the calendar year for a period equaling the period of regular term of school in such district within the calendar year shall be accepted as compliance with this act." (*School Laws*, 1921, p. 62.)

Keeping of Records.

"It is hereby made the duty of each teacher in all of the public, private, denominational and parochial schools of this state to keep a record showing the name, age, and address including the number of the school district and the county of each child enrolled, the number of the school district in which said school is located, the number of days each pupil was present and the number of days absent, and the cause of absence. On the third day on which the public, private, denominational and parochial schools are in session at the beginning of each school year, it shall be the duty of each teacher to send to the county superintendent a list of the pupils enrolled in his or her school with the age, grade and address of each, except

that in metropolitan cities and cities of the first class such report shall be made to the superintendent of the city schools of such district." (*School Laws*, 1921, p. 64.)

General Rules Relative to Private Schools.

"All private, denominational and parochial schools in the state of Nebraska and all teachers employed or giving instruction therein shall be subject to and governed by the provisions of the general school laws of the state so far as the same apply to grades, qualifications and certification of teachers and promotion of pupils. All private, denominational and parochial schools shall have adequate equipment and supplies and shall be graded the same and shall have courses of study for each grade conducted therein substantially the same as those given in the public schools where the children attending would attend in the absence of such private, denominational or parochial schools." (*School Laws*, 1921, p. 65.)

Certification of Teachers.

"No person shall after September 1, 1919, be employed to teach or teach in private, denominational or parochial school who has not obtained a teacher's certificate entitling such teacher to teach corresponding courses or classes in public schools where the children attending would attend in the absence of such private, denominational or parochial school." (*School Laws*, 1921, p. 65.)

Religious Instruction.

"Nothing in this act contained shall be so construed as to interfere with religious instruction in any private, denominational or parochial school." (*School Laws*, 1921, pp. 65–66.)

Management of Private Schools.

"For the purposes of this act the owner or governing board of any private, denominational or parochial school shall have authority to select and purchase text-books, equipment and supplies, to employ teachers and to have and exercise the general management of the school, subject to the provisions of this act." (*School Laws*, 1921, p. 66.)

Courses Required.

"All public, private, denominational and parochial schools shall give in the proper grades such courses in American History and in Civil Government, both state and national, as will give the pupils therein a thorough knowledge of the history of our country and its institutions and of our form of government, and shall conduct such patriotic exercises as may be prescribed from time to time by the state superintendent." (*School Laws*, 1921, p. 66.)

Inspection of Private Schools.

"The county superintendent of the county, or the city superintendent of the city, where any private, denominational or parochial school is located, shall inspect such schools and report to the proper officers any evidence of

the use of any text books or of any activites, instruction or propaganda therein subversive to American institutions and republican form of government or good citizenship or of failure to observe any of the provisions of this act and the State Superintendent of Public Instruction shall require the several county and city superintendents to make such inspections at least twice each year and the school officers of such schools and the teachers giving instruction therein are hereby required to permit such inspection and assist and cooperate in the making of the same." (*School Laws*, 1921, p. 66.)

Penalties.

"In case any private, denominational or parochial school after a final determination by the proper authorities under this act fails, refuses or neglects to conform to and comply therewith, no person shall be granted or allowed a certificate to teach therein and the pupils attending such school or schools shall be required to attend the public school of the proper district as provided by law in like manner as though there were no such private, denominational or parochial school. Full credit for certification under the law shall be given all teachers who have taught in private, denominational or parochial schools the same as though they had taught in public schools." (*School Laws*, 1921, pp. 66–67.)

"Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than five ($5.00) dollars nor more than one hundred ($100.00) dollars or be imprisoned in the county jail not to exceed three (3) months." (*School Laws*, 1921, p. 67.)

Certification Regulations.

(*School Laws*, 1921, pp. 86–93, and *School Code*, 1919, pp. 70–78.)

All Teachers to Attend Institutes.

"The county superintendent may at his discretion revoke the certificate of or refuse to grant a certificate to any teacher who fails or refuses to attend the county or joint institute. Should graduates from the elementary course of the state normal refuse to attend such institute, it shall be the duty of the county superintendent to report said refusal to the principal of the normal school who shall revoke the certificate of said normal graduate; Provided, the county superintendent may excuse experienced teachers from such attendance when application is made before the opening of the institute and satisfactory reasons for absence are given in writing by such teachers." (*School Code*, 1919, p. 82.)

Only Citizens May Teach.

"That no person shall be qualified, licensed or permitted by the state or county superintendents of public instruction to teach in any public, private and parochial school in the state of Nebraska unless such person is a natural born or duly and fully naturalized citizen of the United States." (*School Code*, 1919, p. 83.)

Religious Garb Forbidden in Public Schools.

"Any teacher in any public school in this state who shall wear in said school or while engaged in the performance of his or her duty any dress, or garb, indicating the fact that such teacher is a member or an adherent of any religious order, sect or denomination, shall upon conviction thereof, be deemed guilty of a misdemeanor and fined in any sum not exceeding one hundred ($100) dollars and the costs of prosecution or shall be committed to the county jail for a period not exceeding thirty days or both." (*School Code*, 1919, pp. 39–40.)

Incorporated Colleges and Normal Schools May Grant Certificates. Conditions.

"*First*—Such institution shall be incorporated under the laws of the state of Nebraska.

"*Second*—The incorporation shall have at least fifty thousand dollars invested, or available for use in the school.

"*Third*—The incorporation shall employ not fewer than five teachers who shall put in full time in giving instruction in the branches of study required to be taught.

"*Fourth*—The state superintendent of public instruction shall satisfy himself by personal inspection or by the personal inspection of the state board of examiners for life certificates that any institution desiring recognition has fully complied with the requirements set forth.

"*Fifth*—The entrance requirements to the elementary and higher courses and the time required for the completion of said courses shall be the same as in the state normal schools. Each year the state superintendent of public instruction shall satisfy himself by personal inspection or by the personal inspection of the state board of examiners for life certificates that the requirements have been met before any certificate can be granted by such institution." (*School Code*, 1919, p. 81.)

Use of English in Schools. Other Languages Forbidden.*

"The English language is hereby declared to be the official language of this state, and all official proceedings, records and publications shall be in such language, and the common school branches shall be taught in said language in public, private, denominational and parochial schools.

"No person, individually or as a teacher, shall, in any private, denominational, or parochial or public school, teach any subject to any person in any language other than the English language.

"Languages other than the English language may be taught as languages only, after a pupil shall have attained and successfully passed the eighth grade as evidenced by a certificate of graduation issued by the county superintendent of the county or the city superintendent of the city in which the child resides. Provided, that the provisions of this act shall not apply to schools held on Sunday or on some other day of the week which those having the care and custody of the pupils attending same conscientiously observe as the Sabbath, where the object and purpose of such schools is the giving of religious instruction, but shall apply to all

* See U. S. Supreme Court Decision on validity of this law, p. 159.

other schools and to schools held at all other times. Provided that nothing in this act shall prohibit any person from teaching his own children in his own home any foreign language.

"It shall be unlawful for any organization, whether social, religious or commercial, to prohibit, forbid or discriminate against the use of the English language in any meeting, school or proceeding, and for any officer, director, member or person in authority in any organization to pass, promulgate, connive at, publish, enforce or attempt to enforce any such prohibition or discrimination.

"Should the courts declare any portion of this act unconstitutional such decision shall affect only the portion so declared to be unconstitutional and shall not affect any other section or any other part of this act, and it is further provided that each part of this act so far as an inducement for the passage of this act is concerned is independent of every other part." (*School Laws*, 1921, pp. 97–98.)

Part-Time School.

"The board in control of the public school of any public school district in the state having at least fifteen children between the ages of fourteen and sixteen years who are regularly and legally employed shall establish a part-time school or class and shall require such children to attend said school or class regularly for not less than eight hours a week while so employed and until they reach the age of sixteen years: Provided that no person over sixteen years of age who is regularly and legally employed shall be barred from attendance upon said part-time schools or classes."

"Every person residing within the state of Nebraska who has legal or actual control of any minor or minors between the ages of fourteen and sixteen years who are regularly and legally employed shall cause such minor or minors to attend regularly upon such part-time school or class as shall be established in accordance with this act. It shall be unlawful for any regularly and legally employed minor between the ages of fourteen and eighteen years to fail or refuse to attend such part-time school or class." (*School Laws*, 1921, p. 54.)

Child Labor.

(*School Code*, 1919, pp. 152–158.)

Aid for Vocational Training.

"Whenever any school, department or class giving instruction in vocational subjects as provided for in this Act and the rules and regulations adopted by the State Board for Vocational Education shall have been approved by the State Board for Vocational Education it shall be entitled to share in the Federal and State funds available within the amount of the appropriation contained in the state budget for such vocational education, to the extent of not less than three-fourths of the salaries of teachers of such vocational subjects ; provided that if the amount of Federal and State funds shall not be sufficient to reimburse in full the amounts due the schools, the State Board for Vocational Education may prorate the sums available among the vocational schools, departments or classes entitled to reimbursement." (*School Laws*, 1921, pp. 105–106.)

Instruction in Fire Prevention.

"Every teacher or instructor in every public, private or parochial school shall devote not less than thirty minutes in each school month, to instruction of pupils in the subject of fire dangers, and in the methods of fire prevention." (*School Code*, 1919, p. 70.)

NEVADA

Exemption from Taxation.

"All real property and possessory rights to the same, as well as personal property in this state, belonging to corporations now existing or hereafter created, shall be subject to taxation the same as property of individuals; provided, that the property of corporations formed for municipal, charitable, religious, or educational purposes may be exempted by law." (*Constitution*, Art. VIII, Sec. 2.)

No Appropriation for Sectarian Purposes.

"No public funds of any kind or character whatever, state, county, or municipal, shall be used for sectarian purposes." (*Constitution*, Art. XI. Sec. 10.)

Compulsory Attendance.

"Each parent, guardian, or other person in the state of Nevada, having control or charge of any child between the ages of seven and eighteen years, shall be required to send such child to a public school during the time in which a public school shall be in session in the school district in which said child resides; but such attendance shall be excused, when satisfactory evidence is presented to the board of trustees of the school district in which such child resides: . . . .

"That the student has already completed the twelve grades of the grade and high school courses; but any student between the ages of fourteen and eighteen years who has completed the work of the first eight grades may be excused from full-time school attendance . . . .

"That the child is receiving under private or public tutelage, at home or in school, equivalent instruction fully approved by the school trustees as to kind and amount . . . ." (*School Laws*, 1921, pp. 71–72.)

Truancy.

(*School Laws*, 1921, pp. 72–74.)

Child Labor.

(*School Laws*, 1921, pp. 135–137.)

Use of English.

"It shall be unlawful for any board of school trustees, regents, or board of education or for any teacher or other person teaching in the public or private schools in the state of Nevada, to cause to be taught or to teach any subject or subjects, other than foreign languages, in the public or private schools in the state of Nevada, in any language except English." (*School Laws*, 1921, p. 151.)

NEW HAMPSHIRE

No Public Funds for Sectarian Purposes.

"No money raised by taxation shall ever be granted or applied for the use of the schools or institutions of any religious sect or denomination." (*Constitution*, Part II, Sec. 82.)

Exemption from Taxation.

"The personal property of institutions devoted to educational purposes, charitable and religious societies . . . . incorporated within this state, and the real estate owned and occupied by them, their officers, or their students for the purposes for which they are incorporated . . . . shall be exempt from taxation, provided none of the income or profits of the business of such corporations or institutions is divided among the stockholders or members, or is used or appropriated for other than educational, charitable, or religious purposes, and provided further, that in each case such exemption is limited to $150,000. Towns are hereby authorized to increase such exemption to such an amount as they may vote, by the majority of those present at any regular town meeting, acting under an article duly incorporated in the warrant for said meeting; and cities are authorized to increase such exemptions to such an amount as the city government may vote and the mayor approve.

"Real estate, whether improved or unimproved, and whether owned by residents or others, is liable to be taxed, except houses of public worship, schoolhouses, seminaries of learning, etc." (*Public Acts of 1923*, ch. 70.)

Compulsory Attendance.

"Every child between eight and sixteen years of age shall attend the public school to which he is assigned or an approved private school during all the time the public schools are in session." (*Laws Relating to Public Schools*, 1923, p. 30.)

Child Labor.

(*Laws Relating to Public Schools*, 1923, pp. 34–43.)

Teaching the Constitution.

"In all public and private schools, located within the state of New Hampshire, commencing with the school year next ensuing after the passage of this act, there shall be given regular courses of instruction in the Constitutions of the United States and of this state. Such instruction in the Constitutions of the United States and of this state shall begin not later than the opening of the eighth grade and shall continue in the high school course to an extent to be determined by the state board of education." (*Laws Relating to Public Schools*, 1923, p. 24.)

Use of English in Schools.

"In the instruction of children in all schools including private schools, in reading, writing, spelling, arithmetic, grammar, geography, physiology, history, civil government, music and drawing, the English language shall

be used exclusively, both for purposes of instruction therein and for purposes of general administration.

"The exclusive use of English for purposes of instruction and administration is not intended to prohibit the conduct of devotional exercises in private schools in a language other than English.

"A foreign language may be taught in elementary schools, provided the course of study (or its equivalent), outlined by the State Board of Education in the common English branches, that is, in reading, writing, spelling, arithmetic, grammar, geography, physiology, history, civil government, music and drawing, be not abridged but be taught in compliance with the law of the state." (*Laws Relating to Public Schools*, 1923, pp. 26-27.)

Medical Inspection.

"The school board of the city or town in which such school district is located, shall appoint one or more school physicians of not less than five years' experience, shall assign one to each public and each private school within such school district, and shall provide them with all proper facilities for the performance of their duties." (*Laws Relating to Public Schools*, 1923, p. 78.)

Schools to Report.

"All academies and private schools shall be furnished with copies of the school register, and shall make an annual statistical report to the state board of education." (*Laws Relating to Public Schools*, 1923, p. 51.)

Use of Public Schoolhouse.

"A school district or a school board thereof may grant the use of any schoolhouse in the district for a writing or singing school, and for religious and other meetings, whenever such use will not conflict with any regular school exercises." (*Laws Relating to Public Schools*, 1923, p. 72.)

Resolution of the State Board of Education Regarding the Approval of Private Schools.

"*Resolved*, That the approval of the board shall not be given to any private school which does not comply with the following requirements:

1. Provide instruction and other educational opportunities as nearly equal as may be reasonably possible to those given in the public schools in the same city or town.
2. Be maintained for 36 weeks in each year, at least five hours a day, and five days in the week, in a sanitary building.
3. Be equipped with reasonably suitable furniture, books, maps, and other necessary appliances.
4. Make the reports required of public schools of the same grade on forms provided by the Board.
5. Teach substantially the same subjects as those prescribed by the Board for the public schools of similar grade.
6. Use the English language as the basic language of instruction and administration as prescribed by law.
7. Be carried on in such manner as to effectively prepare the pupils for the exercise of the rights and the discharge of the duties of American

citizenship, and from the teaching of the prescribed studies produce educational results substantially equivalent to those produced by the teaching of the same studies in the public schools.

Resolved further, That it is the legal duty of the Board to revoke its approval of any private school if and whenever it fails to comply with the foregoing requirements." (*New School Law*, 1919, p. 37.)

NEW JERSEY

Public School Fund Not to be Diverted.

"The fund for the support of free schools . . . . shall . . . remain a perpetual fund; and the income thereof . . . . shall be annually appropriated to the support of public free schools, for the equal benefit of all the people of the state; and it shall not be competent for the legislature to borrow, appropriate or use the said fund, or any part thereof, for any other purpose, under any pretense whatever." (*Constitution*, Art. IV, Sec. VII, 6.)

Compulsory Attendance. Branches to be Taught. Use of English.

"Every parent, guardian, or other person having custody and control of a child between the ages of seven and sixteen years, shall cause such child regularly to attend a day school in which at least reading, writing, spelling, English grammar, arithmetic and geography are taught in the English language by a competent teacher, or to receive equivalent instruction elsewhere than at school, unless such child is above the age of fourteen years, has been granted an age and schooling certificate, and is regularly and lawfully employed in some useful occupation or service; and such regular attendance shall be during all the days and hours that the public schools are in session in said school district . . . ." (*School Laws*, 1921, pp. 111–112.)

Continuation School.

"On and after July first, one thousand nine hundred and twenty, every parent, guardian, or other person having custody and control of a child between the ages of fourteen and sixteen years, to whom an age and schooling certificate has been granted and who is regularly and lawfully employed, shall cause such child to attend a continuation school for a period of at least six hours during each week for at least 36 weeks in each year." (*School Laws*, 1921, p. 112.)

Truancy.

(*School Laws*, 1921, pp. 122–126.)

Child Labor.

(*School Laws*, 1921, pp. 299–301.)

Private Schools Must Report.

"The superintendent or manager of each educational institution receiving support or aid from the state, and the president, manager or

principal of each seminary, academy or private school shall report to the Commissioner of Education annually, on or before the first day of August, such statistics relating to such institution, seminary, academy or school as said Commissioner of Education may require, and in the manner and form prescribed by him; *provided*, that no report concerning the expenses or finances of such seminary, academy or private school shall be required; *and provided further*, that no report of any seminary, academy or private school shall be published or made public by the Commissioner of Education." (*School Laws*, 1921, p. 18.)

Teaching the Constitution.

"In all public and private schools located within the state of New Jersey, commencing with the school year next ensuing after the passage of this act, there shall be given regular courses of instruction in the Constitution of the United States.

"Such instruction in the Constitution of the United States shall begin not later than the opening of the seventh grade, or in private schools a grade equivalent thereto, and shall continue in the high school course and in courses in state colleges, universities and the educational departments of state and municipal institutions, to an extent to be determined by the State Commissioner of Education.

"For the purposes of this act, a public school is hereby defined to be a school that derives its support, entirely or in part, from moneys raised by a general state, county or district tax; a private school is one, attendance at which is a sufficient compliance with the compulsory education requirements contained in the statutes of the state of New Jersey." (*Session Laws*, 1923, ch. 17.)

NEW MEXICO

Exemption from Taxation.

"All church property, all property used for educational or charitable purposes . . . . shall be exempt from taxation." (*Constitution*, Art. VIII, Sec. 3.)

No Appropriation for Sectarian Purposes.

"The schools, colleges, universities, and other educational institutions provided for by this constitution shall forever remain under the exclusive control of the state, and no part of the proceeds arising from the sale or disposal of any lands granted to the state by Congress, or any other funds appropriated, levied, or collected for educational purposes, shall be used for the support of any sectarian, denominational, or private school, college, or university." (*Constitution*, Art. XII, Sec. 3.)

School Attendance.

"Every child of school age and of sufficient physical and mental ability shall be required to attend a public or other school during such period and for such time as may be prescribed by law." (*Constitution*, Art. XII, Sec. 5.)

Compulsory Attendance.

"Children between the ages of six and sixteen years, both inclusive, shall attend public schools of the state for as many weeks as the public schools in the district in which such children reside shall be in session, except that children actually attending private or denominational schools maintaining courses of instruction approved by the State Board of Education shall be exempt from the provisions of this Act. The governing authorities of private and denominational schools shall monthly report to the governing authorities of the public schools wherein such private and denominational schools are situated, the children enrolled in such private and denominational schools who fail to attend the same." (*School Code*, 1923, pp. 27–28.)

Reports Required.

The State Board of Education shall have the power "to require reports at such times as it may deem necessary, on such forms as it may prescribe, from all state educational institutions, and from all schools coming within the provisions of this Act, including private and denominational schools, and from all officials thereof." (*School Code*, 1923, p. 3.)

The State Superintendent of Public Instruction shall have the power "to prepare and cause to be published and distributed bi-ennially a report of all elementary and high schools, academies, normal schools, colleges, and private and denominational schools in the state." (*School Code*, 1923, p. 4.)

NEW YORK

No Appropriation for Sectarian Purposes.

"Neither the state nor any subdivision thereof, shall use its property or credit or any public money, or authorize or permit either to be used, directly or indirectly, in aid or maintenance, other than for examination or inspection, of any school or institution of learning wholly or in part under the control or direction of any religious denomination, or in which any denominational tenet or doctrine is taught." (*Constitution*, Art. IX, Sec. 4.)

Regents of the University of the State of New York.

REGENTS NOT TO INTERFERE WITH SEMINARIES.—"No enactment of the Regents shall modify in any degree the freedom of the governing body of any seminary for the training of priests or clergymen to determine and regulate the entire course of religious, doctrinal or theological instruction to be given in such institution." (*Education Law*, 1922, Sec. 46, pp. 9-10.)

ACADEMIC EXAMINATIONS.—"The Regents shall establish in the secondary institutions of the University, examinations in studies furnishing a suitable standard of graduation therefrom and of admission to colleges, and certificates or diplomas shall be conferred by the Regents on students who satisfactorily pass such examinations." (*Education Law*, 1922, Sec. 48, p. 10.)

INSTITUTIONS IN THE UNIVERSITY.—"The institutions of the University shall include all secondary and higher educational institutions which are now or may hereafter be incorporated in this state, and such other

schools as may be admitted to or incorporated by the University. The Regents may exclude from such membership any institution failing to comply with law or with any rule of the University." (*Education Law*, 1922, Sec. 57, p. 12.)

VISITATION AND REPORTS.—"The Regents, or the Commissioner of Education, or their representatives, may visit, examine into and inspect, any institution in the University . . . . and may require, as often as desired, duly verified reports therefrom . . . . . For refusal or continued neglect on the part of any institution in the University to make any report required, or for violation of any law or any rule of the University, the Regents may suspend the charter or any of the rights and privileges of such institution." (*Education Law*, 1922, Sec. 58, p. 12.)

CHARTERS.—"Under such name, with such number of trustees or other managers, and with such powers, privileges and duties, and subject to such limitations and restrictions in all respects as the Regents may prescribe in conformity to law, they may . . . . incorporate any university, college, academy, ... or other institution . . . . for the promotion . . . . of education in any way . . . . No institution or association which might be incorporated by the Regents under this chapter shall, without their consent, be incorporated under any other general law." (*Education Law*, 1922, Sec. 59, p. 12.)

PROVISIONAL CHARTERS.—"On evidence satisfactory to the Regents that the conditions for an absolute charter will be met within a prescribed time, they may grant a provisional charter. . . . ." (*Education Law*, 1922, Sec. 60, p. 13.)

CONDITIONS OF INCORPORATION.—"No institution shall be given power to confer degrees in this state unless it shall have resources of at least five hundred thousand dollars; and no institution for higher education shall be incorporated without suitable provision, approved by the Regents, for educational equipment and proper maintenance." (*Education Law*, 1922, Sec. 61, p. 13.)

CHANGE OF NAME OR CHARTER.—"The Regents may, at any time, for sufficient cause by an instrument under their seal and recorded in their office, change the name, or alter, suspend or revoke the charter or incorporation of any institution which they might incorporate under Section 59, if subject to their visitation or chartered or incorporated by the Regents or under a general law." (*Education Law*, 1922, Sec. 62, p. 13.)

SUSPENSION OF OPERATION.—"If any institution in the University shall discontinue its educational operations without cause satisfactory to the Regents, it shall surrender its charter to them, subject, however, to restoration whenever arrangements satisfactory to the Regents are made for resuming its work." (*Education Law*, 1922, Sec. 65, p. 17.)

PROHIBITION.—"No individual, association or corporation not holding university or college degree-conferring powers by special charter from the Legislature of this state or from the Regents, shall confer any degrees, or transact business under or in any way assume the name university or college, till written permission to use such name shall have been granted by the Regents under their seal." (*Education Law*, 1922, Sec. 66, p. 17.)

Scholarships.

(*Education Law*, 1922, Secs. 70–78, pp. 23–28.)

Compulsory Attendance.

"1. Every child within the compulsory school ages as herein prescribed, in proper physical and mental condition to attend school, who resides in a city or school district having a population of four thousand five hundred or more and employing a superintendent of schools, shall regularly attend upon instruction for the entire time during which the schools of such city or district are in session as follows:

"a. Each child between seven and fourteen years of age.

"b. Each child between fourteen and sixteen years of age not regularly and lawfully employed.

"2. Every such child, residing elsewhere than in a city or school district having a population of four thousand five hundred or more and employing a superintendent of schools, shall attend upon instruction during the entire time that the school in the district shall be in session, as follows:

"a. Each child between eight and fourteen years of age.

"b. Each child between fourteen and sixteen years of age not regularly and lawfully engaged in any useful employment or service.

"c. The period of which any such school shall be in session shall not be less than one hundred and eighty days of actual school." (*Education Law*, 1922, Sec. 621, p. 193.)

Instruction Required.

"The instruction required under this article shall be:

"1. At a public elementary school in which at least the nine common school branches of reading, spelling, writing, arithmetic, English language, geography, United States history, civics and hygiene are taught in English.

"2. At a public school of higher grade in which the English language and its use and civics are taught in English as part of a regular course of study or of specialized training; or,

"3. Elsewhere than a public school upon instruction in the same subjects taught in English, from texts written in English, by a competent teacher." (*Education Law*, 1922, Sec. 620, p. 193)

Instruction Elsewhere than at a Public School.

"If any such child shall so attend upon instruction elsewhere than at a public school, such instruction shall be at least substantially equivalent to the instruction given children of like age at the public school of the city or district in which such child resides; and such attendance shall be for at least as many hours each day thereof as are required of children of like age at public schools; and no greater total amount of holidays or vacations shall be deducted from such attendance during the period such attendance is required than is allowed in such public school to children of like age. Occasional absences from such attendance, not amounting to irregular attendance in the fair meaning of the term, shall be allowed upon such excuses only as would be allowed in like cases by the general rules and practice of such public school.

"If a child required to attend upon instruction as provided in this article does not attend at a public, private or parochial school maintained in the city or district in which the parent or guardian of said child resides, such parent or guardian shall upon request furnish satisfactory proof to

the local school authorities of said city or district that said child or ward is attending upon lawful instruction elsewhere." (*Education Law*, 1922, Sec. 623, p. 194.)

Patriotism.

"In order to promote a spirit of patriotic and civic service and obligation and to foster in the children of the state moral and intellectual qualities which are essential in preparing to meet the obligations of citizenship in peace or in war, the Regents of The University of the State of New York shall prescribe courses of instruction in patriotism and citizenship, to be maintained and followed in all the schools of the state. . . .

"Similar courses of instruction shall be prescribed and maintained in private schools in the state, and all pupils in such schools over eight years of age shall attend upon such courses. If such courses are not so established and maintained in a private school, attendance upon instruction in such school shall not be deemed substantially equivalent to instruction given to pupils of like age in the public schools of the city or district in which such pupils reside.

"The Regents of the University of the State of New York shall determine the subjects to be included in such courses of instruction in patriotism and citizenship, and the period of instruction in each of the grades in such subjects. They shall adopt rules providing for attendance upon such instruction and for such other matters as are required for carrying into effect the objects and purposes of this article. The Commissioner of Education shall be responsible for the enforcement of this article and shall cause to be inspected and supervise the instruction to be given in such subjects . . . ." (*Education Law*, 1922, Secs. 705-706, pp. 225-226.)

Physical Training.

"All male and female pupils above the age of eight years in all elementary and secondary schools shall receive as part of the prescribed courses of instruction therein such physical training under the direction of the Commissioner of Education as the Regents may determine, during periods which shall average at least twenty minutes in each school day . . . .

". . . . Similar courses of instruction shall be prescribed and maintained in private schools in the state, and all pupils in such schools over eight years of age shall attend upon such courses; and if such courses are not so established and maintained in any private school, attendance upon instruction in such school shall not be deemed substantially equivalent to instruction given to children of like ages in the public school or schools of the city or district in which the child resides." (*Education Law*, 1922, Sec. 695, p. 223.)

Continuation School.

"The board of education of each city and of each such school district in which there are twenty or more minors above the age of fourteen years and below the age of eighteen years, who are not in regular attendance upon instruction, shall establish and maintain part-time or continuation schools or classes in which such minors shall receive instruction . . .

Courses of study in private or parochial part-time or continuation schools or classes which meet the requirements of the statutes and the regulations prescribed thereunder may be approved by the Commissioner of Education and, when thus approved, attendance thereon shall be accepted for that required under this article . . . ." (In the rest of the article regulations are stated in detail.) (*Education Law*, 1922, Sec. 601, pp. 180–183.)

Unlawful Employment of Children and Minors. Employment Certificates. Penalties.

(*Education Law*, 1922, Secs. 626–628, pp. 196–198.)

Attendance Record.

"An accurate record of the attendance of all children between seven and sixteen years of age shall be kept by the teacher of every school, showing each day by the year, month, day of the month and day of the week, such attendance, and the number of hours in each day thereof; and each teacher upon whose instruction any such child shall attend elsewhere than at school, shall keep a like record of such attendance. Such record shall, at all times, be open to the attendance officers or other person duly authorized by the school authorities of the city or district, who may inspect or copy the same; and every such teacher shall fully answer all inquiries lawfully made by such authorities, inspectors, or other persons, and a willful neglect or refusal so to answer any such inquiry shall be a misdemeanor." (*Education Law*, 1922, Sec. 629, p. 198.)

Attendance Officers. Truants.

(*Education Law*, 1922, Secs. 631–634, pp. 200–205.)

Truant Schools.

"Such (school) authorities may order such a (truant) child to be confined and maintained during such period (not exceeding two years) in any private school, orphans' home or similar institution controlled by persons of the same religious faith as the persons in parental relation to such child, and which is willing and able to receive, confine and maintain such child, upon such terms as to compensation as may be agreed upon between such authorities and such private school, orphans' home or similar institution." (*Education Law*, 1922, Sec. 635, p. 206.)

Illiterate Minors to Attend Some School.

"Every minor, between sixteen and twenty-one years of age, who does not possess such ability to speak, read and write the English language, as is required, for the completion of the fifth grade of the public or private schools of the city or school district in which he resides, shall attend some day or evening school or some school maintained by an employer . . ." (*Education Law*, 1922, Sec. 637, p. 208.)

Fire Prevention.

"The Commissioner of Education is hereby directed to provide and prescribe a course of instruction in fire prevention relating to the protection

of life and property against loss or damage as a result of preventable fire, for use in the schools of the state, as prescribed by this article.

"The board of education, trustees, principal or other person in charge of every public, private and parochial school in the state shall arrange for giving such course of instruction in every school under its or his control or direction. Such instruction shall be given to all of the pupils in every such school for a period of not less than 15 minutes in each week during which such school is in session." (*Session Laws*, 1923, Chapter 397.)

Fire Drill.

"It shall be the duty of the principal or other person in charge of every public or private school or educational institution within the state, having more than one hundred pupils, or maintained in a building two or more stories high to instruct and train the pupils by means of drills, so that they may in a sudden emergency be able to leave the school building in the shortest possible time and without confusion or panic." (*Session Laws*, 1923, Chapter 402.)

NORTH CAROLINA

Exemption from Taxation.

"The General Assembly may exempt cemeteries and property held for educational, scientific, literary, charitable or religious purposes." (*Constitution*, Art. V, Sec. 5.)

School Attendance.

"The General Assembly is hereby empowered to enact that every child of sufficient mental and physical ability shall attend the public schools during the period between the ages of six and eighteen years for a term of not less than sixteen months, unless educated by other means." (*Constitution*, Art. IX, Sec. 15.)

Compulsory Attendance.

"Every parent, guardian, or other person in the State having charge or control of a child between the ages of seven and fourteen years shall cause such child to attend school continuously for a period equal to the time which the public school in the district in which the child resides shall be in session." (*School Code Supplement*, 1920–21, p. 43.)

NORTH DAKOTA

Exemption from Taxation.

". . . . The legislative assembly shall by a general law exempt from taxation property used exclusively for school, religious, cemetery, charitable or other public purposes . . . ." (*Constitution*, Art. XI, Sec. 176.)

No Public Funds for Sectarian Purposes.

". . . . No money raised for the support of the public schools of the state shall be appropriated to or used for the support of any sectarian school." (*Constitution*, Art. VIII, Sec. 152.)

Compulsory Attendance.

"Every parent, guardian or other person who resides in any school district or city and who has control over any child of or between the ages of the seventh and fifteenth birthdays, shall send or take such child to a public school in each year during the entire time the public schools of such district or city are in session; . . . . provided, that such parent, guardian or other person having control of any child shall be excused from such duty by the school board of the district or by the board of education of the city or village whenever it shall be shown to their satisfaction, subject to appeal as provided by law, that one of the following reasons therefor exists:

"1. That such child is taught for the same length of time in a parochial or a private school approved by the county superintendent of schools subject to appeal to the superintendent of public instruction; that no school shall be approved by the county superintendent of schools or superintendent of public instruction unless the branches usually taught in the public schools are taught in such schools." (*General School Laws*, 1919, p. 114.)

Child Labor.

(*Educational Laws*, 1921–1923, pp. 38–44.)

OHIO

No Public Funds for Sectarian Purposes.

"No religious or other sect, or sects, shall ever have any exclusive right to, or control of, any part of the school funds of this state." (*Constitution*, Art. VI, Sec. 2.)

Exemption from Taxation.

". . . . public school houses, houses used exclusively for public worship, institutions used exclusively for charitable purposes . . . . may, by general laws, be exempted from taxation." (*Constitution*, Art. XII, Sec. 2.)

Compulsory Attendance.

"Every parent, guardian or other person having charge of any child of compulsory school age who is not employed on an age and schooling certificate must send such child to a public, private or parochial school for the full time the school attended is in session, which shall in no case be for less than thirty-two weeks per school year. Such attendance must begin within the first week of the school term or within one week of the date at which the child begins to reside in the district or within one week after his withdrawal from employment." (*School Laws*, 1921, p. 61.)

"All parents, guardians or other persons who have the care of children who are of compulsory school age and who are not employed on age and schooling certificates shall instruct them, or cause them to be instructed, in reading, spelling, writing, the English language, English grammar and composition, geography, arithmetic, United States history, American government and citizenship, and hygiene, or in such of those branches or in such other branches as are suited to the age, employment and advancement of the particular children and are included in the subjects taught in the schools of the state.

"Compulsory school age shall mean six to eighteen years of age, except that the board of education of any city, village or rural school district may at its discretion provide that in the given school district compulsory school age shall mean seven to eighteen years of age, such action being subject to modification to the standard of six to eighteen years of age by subsequent action of the board, and except that the attendance of a child who becomes six or seven years of age, as the case may be according to the standard of compulsory school age in effect in the given district, during a given semester shall not be required until the beginning of the following semester." (*School Laws*, 1921, p. 62.)

"If any child shall so attend upon instruction elsewhere than in a public school such instruction shall be equivalent to the instruction given children of like age and advancement in the public schools of the district in which such child resides; and the hours and term of attendance exacted shall be equivalent to the hours and term of attendance required of children in the public schools of the district. But nothing in this section shall be construed to require a child to attend a high school instead of a vocational commercial or other special type of school, provided the instruction therein is for a term and for hours equivalent to those of the high school, and provided his attendance at such school will not interfere with a continuous program of education for the child to the age of sixteen." (*School Laws*, 1921, p. 62.)

Part-Time School.

"All parents, guardians and other persons who have the care of children who are employed on age and schooling certificates shall cause them to attend a part-time day school or class for the full time that the school or class is in session whenever such part-time school or class shall have been established and is accessible to the child in the district where the child resides or is employed, unless the superintendent of schools determines that a given child has already completed the same work as or work equivalent to that taken up in such part-time schools or classes as may be available for the child to attend." (*School Laws*, 1921, pp. 60–61.)

"Attendance at a part-time school or class provided by an employer, or by a partnership, corporation or individual, or by a private or parochial school, or by a college, or by a philanthropic or similar agency shall serve in lieu of attendance at a part-time school or class provided by a board of education in case the given school or class is conducted for substantially a term and hours equivalent to those of the part-time schools or classes provided by the local board of education, and in case, further, the school or class is approved by the superintendent of public instruction." (*School Laws*, 1921, p. 71.)

Use of English.*

"All private and parochial schools, which instruct pupils who have not completed a course of study equivalent to that prescribed for the first seven grades of the elementary schools of this state, shall be taught in the English language only. German shall not be taught below the 8th grade." (*School Laws*, 1919, pp. 31–32.)

Physical Education in Teacher-Training Institutions.

"All institutions for the training of teachers in the state of Ohio shall include courses of study designed to prepare teachers to give instruction in physical education. No state-wide certificate shall be granted after June 1, 1924, to persons who have not had such work in physical education, in college or normal school as may be required by the Director of Education." (*Session Laws*, 1923, p. 19.)

Private Schools to Report.

"The principal or teacher in charge of any school public, private or parochial, shall report to the clerk of the board of education of the city, exempted village, village or rural school district in which the school is situated the names, ages and places of residence of all pupils below eighteen years of age in attendance at their schools together with such other facts as said clerk may require to facilitate the carrying out of the provisions of the laws relating to compulsory education and the employment of minors. Such report shall be made within the first two weeks of the beginning of school in each school year, and shall be corrected with the entry of such items as may be prescribed by the superintendent of public instruction within the first week of each subsequent school month of the year." (*School Laws*, 1921, p. 74.)

Employment of Children. Truancy.

(*School Laws*, 1921, pp. 64–77.)

Oath of Allegiance.

All teachers in public and private schools must take an oath of allegiance. (*School Laws*, 1919, p. 36.)

Display of Flag.

The flag must be displayed on or near each public and private school building. (*School Laws*, 1919, p. 29.)

OKLAHOMA

Exemption from Taxation.

". . . . property used exclusively for schools, colleges, and all property used exclusively for religious and charitable purposes, ... shall be exempt from taxation." (*Constitution*, Art. X, Sec. 6.)

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* See U. S. Supreme Court decision on validity of this law, p. 159.

No Appropriation for Sectarian Purposes.

"No public money or property shall ever be appropriated, applied, donated, or used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, or system of religion, or for the use, benefit, or support of any priest, preacher, minister, or other religious teacher or dignitary, or sectarian institution as such." (*Constitution*, Art. II, Sec. 5.)

Compulsory Attendance.

"It shall be unlawful for any parent, guardian or custodian, living in the state of Oklahoma, to neglect or refuse to cause or compel any person or persons who are or may be under his control as children or wards to attend and comply with the rules of some public, private, or other schools unless other means of education are provided, for sixty-six and two-thirds per cent of the term the schools of the district are in session, which shall apply to all children of the district over the age of eight or under the age of eighteen." (*School Code*, 1921, p. 52.)

Truancy.

(*School Code*, 1921, pp. 52–53.)

Child Labor.

(*School Code*, 1921, pp. 100–104.)

Part-Time School.

"The parent, guardian or other person responsible for the custody of any minor or minors over sixteen years of age and under eighteen years of age shall be responsible for the attendance of such minor or minors upon part-time schools or classes whenever such part-time schools or classes have been established in the school district in which such minors are employed and the failure to compel such attendance shall be subject to the same penalties as are imposed for failure to compel attendance, of children over eight and under sixteen years of age upon public, private or other school." (*School Code*, 1921, p. 73.)

Use of English in Schools.

"That the English language is hereby declared to be the language of the people of the state of Oklahoma. And it shall be unlawful to teach or instruct in any other language in any Public, Parochial, Denominational or Private school or other institution of learning within the state of Oklahoma except pupils receiving such instructions shall have completed the eighth grades of common school curriculum as designated by the State Board of Education." (*School Code*, 1921, p. 12.)

Textbooks Must be in English.

"All text-books used in the first eight grades of all said schools shall be printed in the English language." (*School Code*, 1921, p. 12.)

Teaching of American History.

"That from and after taking effect of this Act the teaching of American history in the primary grades of all the schools, both public and private,

of this state shall be compulsory. Such teaching shall commence in the lowest primary grade of each of said schools and shall be continued through all the primary grades; provided that the teaching of Oklahoma history, as now provided by law, may be substituted for American history, in one of the said grades. At least one hour in every scholastic week shall be devoted to such instruction. The instilling into the hearts of the various pupils of an understanding of the United States and of a love of country and devotion to the principles of American government shall be the primary object of such instruction, which shall avoid, as far as possible, being a mere recital of dates and events." (*School Code*, 1921, p. 12.)

Teaching of American History and Civics in High School.

"No person shall be graduated from any high school, public or private, in this state, until he or she shall have satisfactorily completed at least one full year's work in American history and civics." (*School Code*, 1921, p. 12.)

Teaching of American History and Civics in Colleges, Normal Schools, etc.

"No college or university, normal school or chartered institution of learning, shall, under the authority of the state of Oklahoma, grant to any student any degree unless he shall have passed a course in American history and civil government." (*School Code*, 1921, p. 79.)

Reverence for the Flag to be Taught.

"The pupils of every public, private, parochial and denominational school in the state of Oklahoma shall by appropriate ceremonial, to be formulated by the State Superintendent of Public Instruction, be taught the proper reverence and respect for the American Flag." (*School Code*, 1921, p. 69.)

Visiting and Accrediting of High Schools.

"It shall be the duty of the High School Inspector to visit all schools in the state of Oklahoma doing high school work, consult with high school superintendents, principals and boards of education, assist them in standardizing their schools and affiliating them with the State University, the A. & M. College, the Oklahoma College for Women, the six State Normal Schools and all other colleges in the state of Oklahoma doing school work of college rank. When any high school has been visited and accredited, it shall be the duty of said inspector to notify in writing, the high school visited, together with all institutions in the state of college rank of the standard of said high school and the number of high school units for which it is approved." (*School Code*, 1921, p. 6.)

Inspectors to Visit Colleges.

"It shall be the further duty of the High School Inspectors to visit all schools of college rank and to familiarize themselves with the character of work being done in said institutions." (*School Code*, 1921, p. 6.)

Teachers Must Take Oath of Allegiance.

"It shall be unlawful for any person to teach in any of the public, private, parochial or denominational schools of this state until he or she shall have subscribed to the following oath or affirmation:

"I,....., do solemnly swear (or affirm) that I will support, obey and defend the Constitution of the United States, and the Constitution of the state of Oklahoma." (*Session Laws*, 1923, Chapter 150.

Disloyalty.

"No person shall be eligible to teach in any public, private, parochial or denominational school of this state who shall be guilty of teaching or inculcating disloyalty to the United States or of publicly reviling the flag, or the system of government of the United States." (*School Code*, 1921, p. 19.)

Use of Public Schoolhouse.

"The district board shall have the care and keeping of the school house and other property belonging to the district. They are hereby authorized to open the school house for the use of religious, political, literary, scientific, mechanical or agricultural societies belonging to their districts for holding public meetings of such societies under such regulations as the board may adopt." (*School Code*, 1921, p. 20.)

OREGON

No Appropriations for Religious Institutions.

"No money shall be drawn from the treasury for the benefit of any religious or theological institution." (*Constitution*, Art. I, Sec. 5.)

Exemption from Taxation.

"The Legislative Assembly . . . . shall prescribe such regulations as shall secure a just valuation for taxation of all property . . . . , excepting such only for . . . . educational, literary, scientific, religious, or charitable purposes as may be specially exempted by law." (*Constitution*, Art. IX, Sec.1.)

Compulsory Attendance.

"Children between ages of nine and fifteen.

"Every parent, guardian, or other person in the state of Oregon having control or charge of any child, or children, between and including the ages of nine and fifteen years of age, shall be required to send such child, or children to the public schools for a term or period of not less or more than the number of months of public school held annually in the district in which such parent, guardian or other person in parental relation may reside; provided, that in the following cases children shall not be required to attend public schools:

"1. Any child, or children, who is, or are, being taught for a like period of time in a private or parochial school such branches as are usually taught in the first eight years in the public schools, or has, or have already acquired the ordinary branches of learning taught in such schools, the fact of which acquisition of such ordinary branches of learning by such child, or chilhren, shall be determined by the school board in charge of the public school in such district;

. . . .

"4. Any child, or children, who is, or are, being taught for a like period of time by the parent, or private teacher, such subjects as are usually taught in the first eight years in the public school, but before such child, or children, can be taught by a parent or private teacher, such parent or private teacher must receive written permission from the county superintendent, who is hereby authorized to grant such permission only in case of necessity and such permission shall not extend longer than the end of the current school year. Such child, or children, must report to the county school superintendent or some person designated by him at least once every three months and take an examination in the work covered. If after such examination the county superintendent shall determine that such child, or children, is or are not being properly taught then the county superintendent shall order the parent, guardian or other person in parental relation to send such child, or children, to school the remainder of the school year. Failure on the part of the parent, guardian or other person in parental relation to comply with the order of the county superintendent shall render such person liable to the penalty provided for in this act." (*School Laws*, 1921, p. 132.)

New Compulsory Education Law, Enacted by the People of the State of Oregon, Nov., 1922.*

"SEC. 1.—That Section 5259 Oregon laws be and the same is hereby amended so as to read as follows:

"SEC. 5259: CHILDREN BETWEEN THE AGES OF EIGHT AND SIXTEEN YEARS.—Any parent, guardian, or other person in the state of Oregon, having control or charge or custody of a child under the age of sixteen years and of the age of eight years or over at the commencement of a term of public school of the district in which said child resides, who shall fail or neglect or refuse to send such child to a public school for the period of time a public school shall be held during the current year in said district, shall be guilty of a misdemeanor and each day's failure to send such child to a public school shall constitute a separate offense. Provided, that in the following cases, children shall not be required to attend public schools:

(a) CHILDREN PHYSICALLY UNABLE.—Any child who is abnormal, subnormal or physically unable to attend school.

(b) CHILDREN WHO HAVE COMPLETED THE EIGHTH GRADE.—Any child who has completed the Eighth grade, in accordance with the provisions of the state course of study.

(c) DISTANCE FROM SCHOOL.—Children between the ages of eight and ten years inclusive, whose place of residence is more than one and one-half mile, and children over ten years of age whose place of residence is more than three miles, by the nearest traveled road, from a public school; Provided, however, that if transportation to and from school is furnished by the school district, this exemption shall not apply.

(d) PRIVATE INSTRUCTION.—Any child who is being taught for a like period of time by the parent or private teacher such subjects as are usually taught in the first eight years in the public school, but before such child can be taught by a parent or a private teacher, such parent or private teacher must receive written permission from the county superintendent,

* Law declared invalid by Federal District Court, see p. 179.

and such permission shall not extend longer than the end of the current school year. Such child must report to the county school superintendent or some person designated by him at least once every three months and take an examination in the work covered. If, after such examination the county superintendent shall determine that such child is not being properly taught, then the county superintendent shall order the parent, guardian, or other person, to send such child to the public school the remainder of the school year.

If any parent, guardian or other person having control or charge or custody of any child between the age of eight and sixteen years, shall fail to comply with any provision of this section, he shall be guilty of a misdemeanor, and shall, on conviction thereof, be subject to a fine of not less than $5.00, or more than $100.00, or to imprisonment in the county jail not less than two nor more than thirty days, or by both such fine and imprisonment in the discretion of the Court.

This Act shall take effect and be and remain in force from and after the first day of September, 1926."

Teaching the Constitution.

"The teaching of the Constitution of the United States is required in the public and private schools." (*Senate Calendar*, 1923, p. 9.)

Use of English.

"It shall be unlawful for any board of school directors, regents or trustees, or for any teacher or other person teaching in the public or private schools in the state of Oregon, to cause to be taught or to teach any subject or subjects, other than foreign languages, in the public or private schools in the state of Oregon in any language except English." (*School Laws*, 1921, p. 55.)

Truancy.

(*School Laws*, 1921, pp. 120–121 and pp. 133–134.)

Child Labor.

(*Oregon Laws*, Chapter II, Sec. 6668.)

Part-Time Schools.

"All children between the ages of sixteen and eighteen years must be in school or legally employed. If employed, they must attend the part-time schools herein provided, not less than five hours per week or 180 hours per year, unless they have already acquired the ordinary branches of learning taught in the first eight years of the public schools or are attending an evening school for an equivalent time." (*School Laws*, 1921, p. 163.)

Religious Instruction in Parental Schools.

"No religious instruction shall be given in such (parental) schools; but the school board shall make suitable regulation so that the inmates may receive religious training in accordance with the belief of the parents of such children by allowing attendance at public service elsewhere." (*School Laws*, 1921, p. 119.)

Standard Colleges and Normal Schools.

(*School Laws*, 1921, pp. 13–16.)

Superintendent of Public Instruction to Visit Chartered Institutions.

The Superintendent of Public Instruction "shall visit in person, when practicable, all the chartered educational institutions of the state, and shall secure such statistical information relative to number of students, teachers, value of property, libraries, salaries, and courses of study, as he may deem advisable for the advancement of education and for the information of the legislature." (*School Laws*, 1921, p. 5.)

Oath of Allegiance.

"1. Any person entering into a contract to teach in the public schools of the state shall, as a part of the contract, subscribe to the following oath or affirmation:

" 'I solemnly swear, or affirm, that I will support the constitution of the state of Oregon . . . . and the laws enacted thereunder, and that I will teach, by precept and example, respect for the flags of the United States and of the state of Oregon; . . . reverence for law and order and undivided allegiance to the government of our country, the United States of America.'

"The said oath or affirmation, duly signed, shall be filed in the office of the examiner issuing the certificate and a copy shall be given to the applicant making the oath and affirmation.

"2. Every teacher now or hereafter employed in a private or parochial school or in any academy, college, university or other institution or (of) learning in this state shall, before entering upon the discharge of his or her duties, take the same oath or affirmation of allegiance as that prescribed for public school teachers in paragraph 1. Such oath or affirmation shall be taken and subscribed to before some officer authorized by the state to administer oaths, and a copy of the oath or affirmation shall be filed with the officer or board in charge of such private or parochial school or other institution of learning.

"The above requirements shall not apply to exchange professors or teachers whose term of service is temporary, and who do not become permanent residents of the United States.

"3. Whoever being in charge of any public, private or parochial school, or any academy, college, university or other institution of learning shall allow or permit any teacher to enter upon the discharge of his duties, or to give instruction therein unless such teacher shall have taken and subscribed to the oath or affirmation of allegiance provided for in paragraphs 1 and 2, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than $100. (*School Laws*, 1921, pp. 45–46.)

Wearing of Religious Garb.

The wearing of sectarian garb by teachers in the public schools is prohibited. (*Senate Calendar*, 1923, p. 63.)*

* See Indiana, p. 31; "State Supreme Court decisions on the Wearing of Religious Garb in Public School," p. 203; "Nuns as Public School Teachers," p. 207.

Use of Public Schoolhouse.

"A district school board may at its discretion permit a schoolhouse, when not occupied for school purposes, to be used under careful restrictions for any proper purpose, giving equal rights and privileges to all religious denominations." (*School Laws*, 1921, p. 57.)

Fire Drill.

"It shall be the duty of the state fire marshal, his deputies, and assistants to require teachers of public and private schools and educational institutions to have one fire drill each month and to keep all doors and exits unlocked during school hours." (*School Laws*, 1921, p. 45.)

PENNSYLVANIA

No Appropriations for Institutions Not State Controlled.

"No appropriation shall be made to any charitable or educational institution not under the absolute control of the Commonwealth." (*Constitution*, Art. III, Sec. 17)

Exemption from Taxation.

". . . the General Assembly may, by general laws, exempt from taxation . . . actual places of religious worship, . . . and institutions of purely public charity." (*Constitution*, Art. IX, Sec. 1.)

Teaching the Constitution.

"In all public and private schools located within the Commonwealth, commencing with the school year next ensuing after the passage of this act, there shall be given reguar courses of instruction in the Constitution of the United States.

"Such instruction in the Constitution of the United States shall begin not later than the opening of the eighth grade, and shall continue in the high school course, and in the courses in state colleges and state universities, and the educational departments of state and municipal institutions, to an extent to be determined by the Superintendent of Public Instruction." (*Session Laws*, 1923, No. 223.)

Department of Welfare.

"The Department of Welfare shall have supervision over: . . . . . All children's institutions within this Commonwealth."

" 'Children's Institutions' shall mean any incorporated or unincorporated organization, society, corporation, or agency, public or private, which may receive or care for children.

"The Department of Welfare shall have the power: To visit and inspect, at least once in each year, all state, semi-state, and supervised institutions, to inquire and examine into their methods of instruction, discipline, detention, imprisonment, care or treatment, the care, treatment, government or management of their inmates or those committed thereto or being imprisoned, detained, treated, or residing therein, the official

conduct of their inspectors, trustees, managers, directors, or other officer or officers charged with their management by law or otherwise or having the management, care, custody, or control thereof, the buildings, grounds, premises, and equipment thereof or connected therewith, and all and every matter and thing relating to their usefulness, administration, and management, and to the welfare of the inmates thereof or those committed thereto or being imprisoned, detained, treated, or residing therein.

"For these purposes the Secretary of Welfare, or other officer, inspector, or agent of the department, shall have free and full access to the grounds, premises, and buildings thereof, and to all the records, books, or papers of or relating to, any such state, semi-state, or supervised institution, and full opportunity to interrogate or interview any inmate thereof, or any person or persons committed to or being imprisoned, detained, treated, or residing therein, and all persons connected with any such state, semi-state, or supervised institution as officers or charged with the management thereof by law or otherwise, or in way having the care, custody, control, or management thereof, or connected therewith as employees, are hereby directed and required to give to the Secretary of Welfare, or to such officer, inspector, or agent of the department, such means, facilities, and opportunity for such visitation, examination, inquiry, and interrogation as is hereby provided and required, or as the department by its duly ordained rules or regulations, may require." (*Session Laws*, 1923, pp. 599–601.)

Displaying the Flag.

"All boards of education, all proprietors or principals of private schools, and all authorities in control of parochial schools or other educational institutions, shall display the United States national flag, not less than three feet in length, within all school buildings under their control during each day such schools are in session." (*School Laws*, 1921, p. 60.)

Compulsory Attendance.

"Every child having a legal residence in this Commonwealth, as herein provided, between the ages of eight and sixteen years, is required to attend a day school in which the common English branches provided for in this act are taught *in the English language;* and every parent, guardian, or other person, in this Commonwealth, having control or charge of any child or children, between the ages of eight and sixteen years, is required to send such child or children to a day school in which the Common English branches are taught *in the English language;* and such child or children shall attend such school continuously through the entire term, during which the public elementary schools in their respective districts shall be in session: Provided, That the certificate of any principal or teacher of a private school, or of any institution for the education of children, in which the common English branches are taught *in the English language*, setting forth that the work of the said school is in compliance with the provision of this act, shall be sufficient and satisfactory evidence thereof. Regular daily instruction in the English language, for the time herein required, by a properly qualified private tutor, shall be considered as complying with the provisions of this section, if such instruction is satisfactory to the proper county or district superintendent of schools." (*School Laws*, 1921, p. 103.)

Record of Enrollment.

"Every principal or teacher in every other than a public school, and in every institution for children, and every private teacher in every school district in this Commonwealth, shall, immediately after their admission to such school or institution, or at the beginning of such private teaching, furnish to the district superintendents, supervising principals, or secretaries of the boards of school directors of the districts wherein the parents or guardians of such children reside, lists of the names and residences of all children between eight and sixteen years of age enrolled in such school or institution, or taught by such private teacher; and shall further report at once to such district superintendent, supervising principal, or secretary of the board of school directors, the name and date of withdrawal of any such pupil withdrawing from any such school or institution, or from such private instruction, if such withdrawal occurs during the period of compulsory attendance in said district. And every principal or teacher in a school other than a public school, and every private teacher, shall also report at once to the superintendent, supervising principal, or secretary of the board of school directors of the district, any such child who has been absent three days, or their equivalent, during the term of compulsory attendance, without lawful excuse." (*School Laws*, 1921, pp. 104–105.)

Truancy.

(*School Law*, 1921, pp. 109–111, 184–188.)

Course of Study.

"In every elementary public *and private school*, established and maintained in this Commonwealth, the following *subjects* shall be taught, in the English language *and from English texts*. *English*, including spelling, reading, and writing, arithmetic, geography, *the* history of the United States and of Pennsylvania, *civics*, *including* loyalty to the State and National Government, *training in safety first*, *methods* and *the* humane treatment of birds and animals, *health*, *including* physical training and physiology, *music*, *art*." (*School Law*, 1921, p. 116.)

Private School Pupils May Attend Certain Public Schools.

The board of school directors may establish the following schools and departments: "High schools, manual training schools, vocational schools, domestic science schools, agricultural schools, evening schools, kindergartens, libraries, museums, reading-rooms, gymnasiums, playgrounds, schools for blind, deaf, and mentally deficient, truant schools, parental schools, schools for adults.

"Public lectures—together with such other schools or educational departments as they, in their wisdom, may see proper to establish:

"Provided, That no pupil shall be refused admission to the courses in these additional schools or departments by reason of the fact that his elementary or academic education is being or has been received in a school other than a public school." (*School Law*, 1921, pp. 33–34.)

Child Labor.

(*School Law*, 1921, pp. 189–197.)

Wearing of Religious Garb in Public Schools Forbidden.

"That no teacher in any public school of this Commonwealth shall wear in said school or whilst engaged in the performance of his or her duty as such teachers, any dress, mark, emblem or insignia indicating the fact that such teacher is a member or adherent of any religious order, sect or denomination." (*School Law*, 1921, p. 211.) *

RHODE ISLAND

Exemption from Taxation.

"The following property shall be exempt from taxation: . . . . buildings for religious worship and the land upon which they stand and immediately surrounding the same, to an extent not exceeding one acre, so far as said buildings and land are occupied and used exclusively for religious or educational purposes; the buildings and personal estate owned by any corporation used for a school, academy or seminary of learning, and of any incorporated public charitable institution, and the land upon which said buildings stand and immediately surrounding the same to an extent not exceeding one acre, so far as the same is used exclusively for educational purposes, but no property or estate whatever shall hereafter be exempt from taxation in any case where any part of the income or profits thereof or of the business carried on thereon is divided among its owners or stockholders." (*General Laws*, 1923, Chapter 58, Sec. 2.)

Compulsory Education.

"Every child who has completed seven years of life and has not completed sixteen years of life, unless he has completed in the public schools the elementary studies taught in the first eight years of school attendance, exclusive of kindergarten instruction, provided for in the course of study adopted by the school committee of the city or town wherein such child resides, or unless he shall have completed fourteen years of life and shall be lawfully employed at labor or at service or engaged in business shall regularly attend some public day school during all the days and hours that the public schools are in session in the city or town wherein he resides; and every person having under his control a child as above described in this section shall cause such child to attend school as required by the above stated provisions of this section, and for every neglect of such duty the person having control of such child shall be fined not exceeding twenty dollars: Provided, that if the person so charged shall prove or shall present a certificate made by or under the direction of the school committee of the city or town wherein he resides, setting forth that the child has already completed the elementary studies above mentioned; or that the child has attended for the required period of time a private day school, or received private instruction approved by the state board of education . . . . then such attendance shall not be obligatory nor shall such penalty be incurred." (*General Laws*, 1923, Chapter 76 Sec. 1.)

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*See Indiana, p. 31; "State Supreme Court Decision on the Wearing of Religious Garb in Public Schools," p. 203; "Nuns as Public School Teachers," p. 207.

Private Schools. Reports Required. Conditions of Approval.

"All private schools or institutions of learning in this state shall be registered at the office of the state board of education, said registry showing location, name, officers or persons in charge, grade of instruction, and common language used in teaching. They shall also make a report annually in the month of July to the state board of education, showing the number of different pupils enrolled, the average attendance, the number of teachers employed and such other facts of age, attendance and instruction as said board may require. The state board of education shall approve a private school only when it appears that the period of attendance of the pupils in such schools is substantially equal to that required by law in public schools, that the instruction in such school in all studies, except foreign languages and any studies not taught in the public schools, is in the English language, that such instruction is thorough and efficient, that reports are made as required by law, and that registers are kept and returns to the superintendent of schools and truant officer in relation to attendance of pupils are made the same as by public schools." (*General Laws*, 1923, Chapter 65, Sec. 15.)

Keeping of Register.

"Every teacher in any public or private school shall keep a register of the names of all the scholars attending said school, their sex, age, names of parents or guardians, the time when each scholar enters and leaves the school, the daily attendance, together with the days of the month on which the school is visited by any officer connected with public schools, and shall prepare any report required by the school committee or commissioner of education." (*General Laws*, 1923, Chapter 71, Sec. 6.)

Teaching the Constitution.

"The principles of popular and representative government as enunciated in the constitution of Rhode Island and the constitution of the United States shall be taught in all the public schools of this state. In every class of the seventh or eight year in elementary schools instruction shall be given in the history and government of Rhode Island, and in every high school thorough instruction shall be given in the constitution and government of Rhode Island and in the constitution and government of the United States. No private school or private instruction shall be approved for the purposes of section fifteen of chapter sixty-five of the general laws unless the course of study therein shall make provision for instruction substantially equivalent to that required by this chapter for public schools." (*General Laws*, 1923, Chapter 70. Sec. 30.)

Physical Training.

"All children above the age of eight years, attending public schools or such other schools as are managed and controlled by the state shall receive therein instruction and practice in physical training under such regulations as the state board of education may prescribe or approve during periods which shall average at least twenty minutes in each school day. No private school or private instruction shall be approved by any school

committee for the purposes of chapter seventy-six of the general laws as substantially equivalent to that required by law of a child attending a public school in the same city and town unless instruction and practice in physical training similar to that required in public schools shall be given." (*General Laws*, 1923, Chapter 78, Sec. 6.)

Drills.

"It shall be the duty of the principal or other person in charge of every public school or private school or educational institution within the state, having more than twenty-five pupils, to instruct and train the pupils by means of drills, so that they may in a sudden emergency be able to leave the school building in the shortest possible time and without confusion or panic. Such drills or rapid dismissals shall be held at least once each month." (*General Laws*, 1923, Chapter 71, Sec. 9.)

Medical Inspection.

"The school committee of any town or city may employ one or more school physicians, each of whom shall at least once each year make examination of the pupils, teachers and janitors of the schools, public and private, assigned to his care and of the buildings and surroundings thereof, and shall make report of such examination to the superintendent of schools in said town or city for such action as may be necessary." (*General Laws*, 1923, Chapter 78, Sec. 1.)

Continuation Schools.

"Every person who has completed sixteen years of life and who has not completed twenty-one years of life, and who cannot speak, read and write the English language in accord with standards approved by the state board of education, and who resides in a town in which the school committee has established a day continuation school for the teaching of the English language, or an evening school, shall attend either the day continuation school or the evening school at least two hundred hours between the first day of September and the first day of June in every year until he shall have acquired reasonable facility in speaking, reading and writing the English language in accord with standards approved by the state board of education. For the purpose of this chapter day continuation or evening schools may be established in shops or factories: Provided, that such schools are under control and supervision of the school committee. Attendance in private schools or private instruction in the English language may be accepted as compliance with this chapter in lieu of attendance on public instruction only if the private instruction is approved by the school committee as substantially equivalent in content, method and the hoursof instruction to the instruction offered in public schools. Persons instructed in private schools or receiving private instruction in accordance with the provisions of this section shall be deemed as having acquired reasonable facility in speaking, reading and writing the English language as provided in this section, only after the successful passage by such person of an examination, provided for by the school committee." (*General Laws*, 1923, Chapter 80, Sec. 3.)

Truancy.

(*General Laws*, 1923, Chapter 76, Secs. 2–7.)

Child Labor.

(*General Laws*, 1923, Chapter 85, Sec. 1.)

SOUTH CAROLINA

Exemption from Taxation.

"There shall be exempted from taxation . . . . . the property of all schools, colleges and institutions of learning." (*Constitution*, Art. X, Sec. 4.)

No Appropriation for Sectarian Purposes.

"The property or credit of the state of South Carolina, or of any county, city, town, township, school district, or other subdivision of the said state, or any public money, from whatever source derived, shall not, by gift, donation, loan, contract, appropriation, or otherwise, be used, directly or indirectly in aid or maintenance of any college, school, hospital, orphan house, or other institution, society or organization, of whatever kind, which is wholly or in part under the direction or control of any church or of any religious or sectarian denomination, society or organization." (*Constitution*, Art. XI, Sec. 9.)

Compulsory Attendance.

"Every parent, guardian, or other person having charge of any child between eight and fourteen years of age inclusive, must send such child to a public ,private or parochial school, or to a competent tutor, subject to the approval of the County Superintendent of Education, for four consecutive months, or eighty consecutive school days, during the scholastic year that the school attended is in session; Provided, That in case the term of any school is less than four months or eighty school days, attendance for the full term of such school shall be sufficient to meet the requirements of this Act except as hereinafter provided." (*General School Law*, 1921, p. 68.)

Approval of Private Schools.

"Any private or parochial school attended by any child between eight and fourteen years of age shall be first approved by the State Board of Education. Such school must give its instruction in the English language, and it must teach such subjects as are required in a similar public school in South Carolina, and be supervised by the County Superintendent of Education, or Supervisor of Public Schools." (*General School Law*, 1921, p. 70.)

Private Schools Must Report to State Superintendent.

"The Trustees, officers or persons in charge of all literary, scientific or professional institutions of learning incorporated, supported or aided by

the state, of all schools or private educational institutions, shall, on or before the fifteenth day of July in each year, make a report in writing to the State Superintendent of Education of such statistics as the Superintendent shall prescribe relating to the number of pupils and instructors, courses of study, cost of tuition and the general condition of the institution or school under their charge." (*General School Law*, 1919, p. 62.)

Private Schools Must Report to County Superintendent of Education.

"Any and all private schools shall report to the County Superintendent of Education, upon request therefor, of the county wherein such school is located, the number of pupils receiving instruction, the number in regular attendance, the number of teachers employed, and such other facts as will show the grade and amount of educational work actually done in such private school." (*General School Law*, 1919, p. 86.)

Child Labor.

(*General School Law*, 1921, p. 74.)

SOUTH DAKOTA

No Appropriation for Sectarian Purposes.

"No appropriation of lands, money or other property or credits to aid any sectarian school shall ever be made by the state, or any county or municipality within the state, nor shall the state or any county or municipality within the state accept any grant, conveyance, gift or bequest of lands, money or other property to be used for sectarian purposes, and no sectarian instruction shall be allowed in any school or institution aided or supported by the state." (*Constitution*, Art. VIII, Sec. 16.)

Exemption from Taxation.

"The legislature shall, by general law, exempt from taxation, property used exclusively . . . . . for schools, religious, ... and charitable purposes." (*Constitution*, Art. XI, Sec. 6.)

Compulsory Attendance.

"Every person having under his control a child of the age of eight years and not exceeding the age of seventeen years, shall annually cause such child to regularly attend some public or private day school for the entire term during which the pupil school in the district in which such person resides, or the school to which such child is assigned to attend, is in session, until the child shall have completed the first eight grades of the regular common school course, or shall have completed a course in a private day school equivalent to the first eight grades of the regular common school course, or shall have reached the age of seventeen years, unless excused as hereinafter provided." (*School Code*, 1921, p. 85.)

"The county superintendent shall have authority in all schools under his direct supervision, and the board of education in all independent school districts employing and maintaining a superintendent for the schools of such independent district shall likewise have power, to excuse a child from school attendance for the following reasons:

"Because the child is otherwise instructed by a competent person and for a like period of time in the branches commonly taught in the public schools; provided, that all such instruction shall be given only and entirely in the English language. The county superintendent shall be the judge as to the competency of such instruction and the child so instructed shall take such examination as the county superintendent may require, and reports covering his work shall be filed with the county superintendent in such form and as often as that officer may require." (*School Code*, 1921, p. 86.)

Truancy.

(*School Code*, pp. 85–88.)

Branches to be Taught.

"Instruction shall be given in all the common schools of the state, both public and private, in the English language only, in the following branches, in the several grades in which they may be required in the state course of study: Reading, writing, orthography, arithmetic, geography, primary language and English grammar, history of the United States, history of South Dakota, physiology and hygiene, with special instruction as to the nature of alcoholic drinks, narcotics, and habit-forming drugs and their effects upon the human system, civil government, drawing, and such other branches, including such high school subjects as the electors of the district at the annual election may have ordered; provided, that if high school branches are ordered taught the board shall hire a teacher holding at least a state certificate." (*School Code*, 1921, p. 42.)

Instruction in Patriotism.

"In every educational institution in this state, whether public or private, one hour each week in the aggregate shall be devoted to the teaching of patriotism, the singing of patriotic songs, the reading of patriotic addresses, and a study of the lives and history of American patriots. It shall be the duty of all instructors, and of all school officers and superintendents, to enforce the provisions of this section and any person who shall fail, neglect or refuse to enforce its provisions shall be deemed guilty of a misdemeanor." (*School Code*, 1921, p. 94.)

Instruction in State and Federal Constitutions.

"In all public and private schools located within the state of South Dakota, commencing with the school year next ensuing after the passage of this act, there shall be given regular courses of instruction in the Constitutions of the United States and the state of South Dakota.

"Such instruction in the Constitutions of the United States and the state of South Dakota shall begin not later than the opening of the eighth grade, and shall continue in the high school course to an extent to be determined by the Superintendent of Public Instruction, and such course shall be continued in the state institutions of higher learning to an extent to be determined by the Regents of Education." (*Session Laws*, 1923, Chapter 171.)

Use of English.

"It is the civic right of every child of school age to receive instruction in the subjects outlined in the state course of study and mentioned in Chapter 168, Laws of 1919, in the English language, for a term provided in the state course of study and in the laws of the state, until such child shall have completed the eighth grade; and it shall be unlawful for any person or persons to act, aid, assist, advise or be instrumental in abridging or attempting to abridge the privilege of any child to receive such instruction by substituting therefor, instruction in some foreign language either by shortening the course of instruction in English in any school or by coercing, requiring or inducing any child to withdraw from a school in which instruction is given in English to attend a school in which instruction is given in any foreign language, or to establish a school in which instruction is given in any foreign language as a substitute for a school in which English is the sole medium of instruction.

"It shall be unlawful at any time during the months from September to May, both inclusive, for any person, or persons, or corporation to occupy or use any public school room or other public building in this state for the purpose of giving instruction in any foreign or ancient language or for teaching any subject, or subjects, in any excepting the English language except as permitted by the state course of study and in conformity with the provisions of Chapter 168 of the Session Laws of 1919; and it shall be unlawful during the time above specified for any school board or officer to authorize or permit the use of any public school room or other public building within the state for the purpose of teaching any foreign or ancient language or for the purpose of teaching any subject in such language contrary to the provisions of this section and of the laws herein before refered to. Provided, that nothing herein contained shall be construed to interfere with religious exercises on days other than school days." (*School Code*, 1921, p. 102.)

Use of a Foreign Language.

"It shall be unlawful to teach any subject, except foreign and ancient languages, in any high school, academy, college or higher institution of learning in this state in any except the English language, or to teach any subject, except foreign and ancient languages and religious subjects, in any private school, private academy, private college or any private higher institution of learning in this state except in the English language. Any instructor, school officer or person who shall violate this section shall be deemed guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than twenty-five nor more than one hundred dollars, and, in case of any teacher, such conviction shall be sufficient ground for revocation of his certificate by the superintendent of public instruction." (*School Code*, 1921, p. 43.)

Supervision and Inspection of Private Schools.
Certification of Private School Teachers.

"All private school instruction and all private instruction accepted in lieu of public school instruction shall first be approved by the county superintendent, who shall exercise supervision over such schools and such instruction, and shall exercise the right of visitation and inspection thereof,

and may revoke his approval of such instruction at any time, and such schools make all reports to the county superintendent concerning attendance as are required of public schools; provided, that any person aggrieved by the decision of the county superintendent in the exercise of such supervision may appeal to the superintendent of public instruction, whose decision shall be final. Provided, that no person shall be permitted to teach in any private school any of the branches prescribed to be taught in the public schools unless such person shall hold a certificate entitling him to teach the same branches in any public schools of this state." (*School Code*, 1921, pp. 88–89.)

Regulations Relative to Teachers' Certificates.

(*School Code*, 1921, pp. 5–10 and *Session Laws*, 1923, Chapter 178.)

Oath of Allegiance.

"No teacher's certificate of any grade shall hereafter be issued in this state unless the applicant shall first take and subscribe an oath to support the Constitution of the United States and of the state of South Dakota, which shall be kept on file in the office of the superintendent of public instruction.

"No teacher shall hereafter be employed in any private or parochial or public school, or in any other educational institution within this state who shall not have taken and subscribed an oath of allegiance as required in section one hereof, either preliminary to the issuance of his teacher's certificate or at the time of his employment; in the latter case such oath shall be attached to and become a part of his contract of employment.

"No school board or officer shall hereafter employ as a teacher any person who shall refuse to take the oath of allegiance hereinbefore provided for.

"Any teacher who shall have publicly reviled, ridiculed or otherwise spoken or acted with disrespect and contumacy towards the flag of the United States or its official uniforms or insignia, or towards the system of government of the United States and its Constitution, or shall refuse to take and subscribe the oath of allegiance hereinbefore required, shall thereafter forever be disqualified to teach in any public school within this state, and the certificate of any such teacher shall be revoked by the superintendent of public instruction upon satisfactory proof of the commission of any such offense." (*School Code*, 1921, p. 103.)

Americanization of Aliens.

"All persons between the ages of 16 and 21 years, inclusive, who are not physically or mentally disqualified, and who do not possess the ability to speak, read and write the English language, as is required for the completion of the fifth grade in the public schools of this state, shall attend public evening school classes for at least eight hours each week during the entire time that evening classes of the proper grade shall be in session in the school district wihtin five miles of his or her place of residence or until the necessary ability has been acquired; provided, that regular attendance at a public day or part-time school shall be accepted in place of attendance at evening school classes." (*School Code*, 1921, p. 89.)

Normal Training in High Schools.
(*School Code*, 1921, p. 96.)

Excuse from Attendance for the Purpose of Receiving Religious Instruction.

"A child may on application of his parent or guardian be excused from school for one hour per week for the purpose of taking and receiving religious instruction conducted by some church or association of churches or any Sunday School Association incorporated under the laws of the state or any auxiliary thereof; said time, when pertaining to schools in open country, may be used cumulatively each separate month, as local circumstances may require. The County Superintendent of Schools in Common School Districts and the Board of Education in Consolidated and Independent School Districts shall decide at what hour scholars may be thus excused, and in no event shall such instruction be given in whole or in part at public expense." (*Session Laws*, 1923, Chapter 167.)

Use of Public Schoolhouse.

"Public schoolhouses, outside of cities and towns, may hereafter be used for public meetings, including singing, literary societies, political and other meetings for moral purposes." (*School Code*, 1921, p. 77.)

TENNESSEE

Common School Fund not to be Diverted.

". . . . no law shall be made authorizing said (common school) fund or any part thereof to be diverted to any other use than the support and encouragement of common schools." (*Constitution*, Art. XI, Sec. 12.)

Exemption from Taxation.

"All property, real, personal, or mixed, shall be taxed; but the legislature may except . . . . such as may be held and used for purposes purely religious, charitable, scientific, literary, or educational." (*Constitution*, Art. II, Sec. 28.)

Compulsory Attendance.

"Every parent, guardian, or other person, in the state of Tennessee, having charge or control of any children between the ages of seven and sixteen years, inclusive, shall cause such child to be enrolled in and attend some day school, public, private, or parochial, for the entire term of school in each year in the county or city in which said child may reside." (*School Code*, 1923, p. 50.)

Delinquency and Truancy.
(*School Code*, 1923, pp. 53–55.)

Contracts of Consolidation with Private Schools.

"The County Board of Education shall have power to make contracts of consolidation with the proper authorities of seminaries, academies, or

colleges, or with City Boards of Education, or District Directors, whereby the county high school may be taught in said seminaries, academies, or colleges, or city or district schools; provided, that the high school branches be taught free of charge to all pupils of the county entitled thereto; and provided, further, that the authority of the State Commissioner of Education and County Superintendent, the Board of Education, and all school officers shall be as full and ample in such consolidated school as in other county high schools; and provided, further, that no teacher shall be employed in teaching the said high school branches unless said teacher shall have a teacher's certificate of such grade as may be prescribed for such service, the County Superintendent under the general regulations, and unless the employment of said teacher shall be approved by the Board of Education." (*School Code*, 1923, p. 45.)

Fire Drill.

"It shall be the duty of the Fire Prevention Commissioner, his deputies and assistants,to require officials and teachers of public and private schools and educational institutions to have at least one fire drill each month." (*School Code*, 1923, p. 39.)

TEXAS

No Appropriation for Sectarian Purposes.

"The available school fund shall be applied annually to the support of the public free schools. And no law shall ever be enacted appropriating any part of the permanent or available school fund to any other purpose whatever; nor shall the same or any part thereof ever be appropriated to or used for the support of any sectarian school." (*Constitution*, Art. VII, Sec. 5.)

Exemption from Taxation.

". . . . the legislature may, by general laws exempt from taxation . . . . actual places of religious worship . . . .; all buildings used exclusively and owned by persons or associations of persons for school purposes and the necessary furniture of all schools; also the endowment funds of such institutions of learning and religion not used with a view to profit . . . ." (*Constitution*, Art. VIII, Sec. 2.)

Compulsory Attendance.

"Every child in this state who is eight years and not more than fourteen years old shall be required to attend the public schools in the district of its residence, or in some other district to which it may be transferred, as provided by law, for a period of not less than one hundred (100) days.

"The following classes of children are exempt from the requirements of this Act:

"(a) Any child in attendance upon a private or parochial school which shall include in its course a study of good citizenship, and shall make the English language the basis of instruction in all subjects shall be exempted from the provisions of this Act." (*Senate Journal*, 1923, p. 1533.)

Truancy.

(*School Code*, 1922, pp. 133–140.)

Report Enrollment.

"It shall be the duty of the superintendent, principal or other official of private, denominational or parochial schools to furnish to said county superintendent a list of all children of scholastic age enrolled in the school presided over by said official." (*School Code*, 1922, p. 138.)

UTAH

No Appropriation for Sectarian Purposes.

"Neither the legislature, nor any county, city, town, school district or other public corporation, shall make any appropriation to aid in the support of any school, seminary, academy, college, university or other institution controlled in whole, or in part, by any church, sect or denomination whatever." (*Constitution*, Art. X, Sec. 13.)

Exemption from Taxation.

". . . . lots with buildings thereon used exclusively for either religious worship or charitable purposes . . . . shall be exempt from taxation." (*Constitution*, Art. XIII, Sec. 3.)

Compulsory Attendance.

"Every parent, guardian, or other person having control of any child between eight and sixteen years of age shall be required to send such child to a public, district, or private school in the district in which he resides, at least twenty weeks in each school year, ten weeks of which shall be consecutive; provided, that in cities of the first and of the second class and children shall be required to attend school at least thirty weeks in each school year, ten of which shall be consecutive; provided, that in each year such parent, guardian, or other person having control of any child shall be excused from such duty by the school board of the district or the board of education of the city, as the case may be, whenever it be shown to their satisfaction that one of the following reasons exists:

"1. That such child is taught at home in the branches prescribed by law for the same length of time as children are required by law to be taught in the district school.

"2. That such child has already acquired the branches of learning taught in the district schools." (*School Laws*, 1921, p. 60.)

Part-Time Schools.

"Every parent, guardian, or other person having control of any minor between sixteen and eighteen years of age or any minor under sixteen years of age who has completed the eighth grade, shall be required to send such minor to a regular public or private school at least thirty weeks each school year, unless such minor is legally excused to enter employment; and if such minor is so excused, the said parent, guardian, or other person shall be required to send such minor to a part-time school or a continuation school at least 144 hours per year." (*School Laws*, 1921, pp. 68–69.)

Truancy.

(*School Laws*, 1921, pp. 39–41.)

Teaching the Constitution in Schools and Colleges.

"In all public and private schools located within the state, commencing with the school year next ensuing after the passage of this Act, there shall be given regular courses of instruction in the Constitution of the United States.

"Such instruction in the Constitution of the United States shall be given at such time and be pursued to such an extent in the public and private schools as shall be determined by the State Board of Education.

"Such instruction in the Constitution of the United States shall be given in all colleges and universities in the state at such time and to such an extent as shall be determined by the respective faculties of such institutions." (*Session Laws*, 1923, Chapter 4.)

Americanization

"Every alien person residing in this state, except those who may be physically or mentally disqualified, between the ages of sixteen and thirty-five years, who does not possess such ability to speak, read, and write the English language as is required for the completion of the fifth grade of the public schools of the state, shall attend a public evening school class for at least four hours a week during the entire time an evening school class of the proper grade shall be in session in that district within two and one-half miles of his place of residence, or until the necessary ability has been acquired." (*School Laws*, 1921, p. 72.)

VERMONT

Encouragement and Protection of Religion and Learning.

"All religious societes, or bodies of men that may be united or incorporated for the advancement of religion and learning, or for other pious and charitable purposes, shall be encouraged and protected in the enjoyment of the privileges, immunities, and estates, which they in justice ought to enjoy, under such regulations as the General Assembly of this state shall direct." (*Constitution*, Chapter I, Sec. 64.)

Compulsory Attendance.

"A person having the control of a child between the ages of eight and sixteen years shall, unless such child is mentally or physically unable so to attend or is otherwise being furnished with the same education or has completed the elementary school course or the rural school course and the first two years of the junior or senior high school course or is excused by the superintendent or a school director as provided in this chapter, cause such child to attend a public school continuously for the full number of days for which such school is held." (*School Code*, 1921, p. 29.)

Medical Inspection.

"Said medical inspectors shall, under such rules and regulations, examine the pupils of any private school located in such district, when

requested so to do by the principal thereof, or when any communicable disease is present in such district, or when the pupils thereof may have been exposed to any such disease." (*School Code*, 1921, p. 43.)

Fire Drill.

"The principal or person in charge of a public or private school or educational institution, other than a university or college, shall drill the pupils so that they may be able to leave the school building in the shortest possible time and without panic or confusion. Such drills shall be held at least once in each month, when such school or institution is in session." (*School Code*, 1921, p. 44.)

VIRGINIA

No Public Funds for Sectarian Purposes.

"No appropriation of public funds shall be made to any school or institution of learning not owned or exclusively controlled by the state of some political subdivision thereof." (*Constitution*, Sec. 141.)

Exemption from Taxation.

". . . . the following property . . . . shall be exempt from taxation, state and local; but the General Assembly may hereafter tax any of the property hereby exempted. . . ."

"(d) Buildings with the land they actually occupy, and the furniture, furnishings, books and instruments therein, wholly devoted to educational purposes, belonging to, and actually and exclusively occupied and used by churches, public libraries, incorporated colleges, academies, industrial schools, seminaries, or other incorporated institutions of learning . . ." (*Constitution*, Sec. 183.)

Compulsory Attendance.

"Every parent, guardian, or other person in the state of Virginia, having control or charge of any child, or children, who have reached the eighth birthday and have not passed the fourteenth birthday, shall send such child, or children, to a public school or to a private, denominational or parochial school or have such child or children taught by a tutor or teacher in a home, and such child, or children, shall attend regular such school during the period of each year the public schools are in session and for the same number of days as in the public schools . . . ."

"For the purpose of this act instruction in a private, denominational, or parochial school, or in a home by a tutor or other teacher shall be deemed equivalent to instruction in a public school." (*Acts of Assembly*, 1922, Chapter 381.)

Use of Public Schoolhouse.

"When a responsible resident citizen of any school district may apply to any school trustees of said district for the use of a schoolhouse, to be used when the school is not in session during the school term or in vacation, by any lawful assembly of educational, agricultural, civic or social bodies, organizations or gatherings, the said trustee may grant the use of said building." (*School Laws*, 1920, p. 36.)

WASHINGTON

Publicly Supported Schools to be Non-Sectarian.

"All schools maintained or supported wholly or in part by the public funds shall be forever free from sectarian control or influence." (*Constitution*, Art. IX, Sec. 4.)

Compulsory Attendance.

"All parents, guardians and other persons in this state having or who may hereafter have immediate custody of any child between eight and fifteen years of age (being between the eighth and fifteenth birthdays), or of any child between fifteen and sixteen years of age (being between the fifteenth and sixteenth birthdays) not regularly and lawfully engaged in some useful and remunerative occupation, shall cause such child to attend the public school of the district in which the child resides, for the full time when such school may be in session, or to attend a private school for the same time, unless the superintendent of schools of the district in which the child resides, if there be such a superintendent, and in all other cases the county superintendent of common schools, shall have excused such child from such attendance because the child is physically or mentally unable to attend school or has already attained a reasonable proficiency in the branches required by law to be taught in the first eight grades of the public schools of this state, as provided by the course of study of such school, or for some other sufficient reason. Proof of absence from public school or approved private school shall be *prima facie* evidence of a violation of this section.

"Private schools should be approved, and the county superintendent is the proper person to make the examination thereof." (*School Code*, 1917, pp. 155–156.)

Part-Time Schools.

"Whenever a part-time school or class is established and maintained in accordance with this act by the district in which any minor under eighteen years of age resides or in which he is employed, the parent, guardian or other person having control or charge of such minor shall cause him or her to attend such part-time school or class at least four hours per week during the time the public schools of the district where such school or class is located are in session, unless (1) such minor is in attendance upon a regular full-time day school supported by either public or private funds, or (2) shall have completed a four-year high school course, or its equivalent, or (3) is in attendance upon a part-time school maintained in accordance with the provisions of this act, and approved by the State Board, although not qualifying for reimbursement . . . ." (*Session Laws*, 1919, p. 423.)

Child Labor.

(*School Code*, 1917, pp. 156–159.)

Private Schools Must Report Attendance.

"It shall be the duty of the principal or head of every private school on or before the 30th day of June of each year to make a sworn report to the

clerk of the district in which any pupil attending such private schoo resides of the actual days' attendance in said private school of each such pupil attending said private school during the preceding school year. The report shall include such pupils only as are between six and twenty-one years of age and whose parents or guardians actually reside in the school district where the said pupil resides, and each district in making up the attendance of said district for the purpose of apportionment shall be entitled to the days' attendance so reported." (*School Code*, 1917, pp. 101–102.)

Educational Institutions to Report.

The Superintendent of Public Instruction shall "require annually ,on or before the 15th day of August, of the president, manager, or principal of every educational institution in this state, a report of such facts arranged in such form as he may prescribe, and he shall furnish blanks for such reports; and it is hereby made the duty of every president, manager or principal, to fill up and return such blanks within such time as the Superintendent of Public Instruction shall direct." (*School Code*, 1917, p. 11.)

Higher Institutions of Learning.

"The State Board of Education shall investigate the character of the work required to be performed as a condition of entrance to and graduation from normal schools, colleges, universities and other institutions of higher education and to prepare an accredited list of higher institutions of learning." (*School Code*, 1917, p. 13.)

Accredited Normal Training Departments.

"When requested by any institution of higher learning situated within the state maintaining a normal training department the board shall send an inspector, qualified for such service, to examine the equipment of such department and to ascertain the extent and character of the courses provided and the preparatory requirements for admission to them, which requirements must include the completion of a high school course or its equivalent, and particularly the qualifications and experience of the instructors and supervisors who are responsible for the work of this department.

"The inspector shall make a detailed report, including declaration of his opinion of the adequacy of the department for the work of educating and training teachers, which report shall be placed on file in the office of the Superintendent of Public Instruction.

"If any such normal training department is ascertained to be equipped and manned adequately for the education and training of teachers and to be under reliable and responsible management and upon a basis of efficiency equal to that of the normal schools maintained by the state, it shall be the duty of the board to accredit such department and to grant life diplomas to graduates who present diplomas certifying that the holders have completed the courses approved by the board when the applicants have complied with the other requirements for life diplomas. It shall be the further duty of the board to inspect all accredited normal training departments each year." (*School Code*, 1917, pp. 13–14.)

Visitation of Children's Homes, etc.

"In each county, the judge presiding over the juvenile court sessions, as defined in this act, may appoint a board of four reputable citizens, who shall serve without compensation, to constitute a board of visitation, whose duty it shall be to visit as often as twice a year all institutions, societies and associations within the county receiving children under this act, as well as all homes for children or other places where individuals are holding themselves out as caretakers of children, also to visit other institutions, societies and associations within the state receiving and caring for children, whenever requested to do so by the judge of the juvenile court . . . . Such visits shall be made by not less than two members of the board, who shall go together or make a joint report. The board of visitors shall report to the court from time to time the condition of children received by or in charge of such institutions, socieites, associations, or individuals. It shall be the duty of every institution, society, or association, or individual receiving and caring for children to permit any member or members of the board of visitation to visit and inspect such institution, society, association or home where such child is kept, in all its departments, so that a full report may be made to the court." (*School Code*, 1917, pp. 185–186.)

Religious Service in Parental School.

"No religious instruction shall be given in such school, but the board of directors may make suitable regulations so that the inmates may receive religious training, either by allowing religious services to be established in the institution, or by arranging for attendance elsewhere." (*School Code*, 1917, p. 191.)

Fire Drill.

"It shall be the duty of the principal or other person in charge of every public or private school or educational institution within the state, to instruct and train the pupils by means of drills, so that they may in a sudden emergency be able to leave the school building in the shortest possible time and without confusion or panic. Such drills or rapid dismissals shall be held at least twice in each month." (*School Code*, 1917, p. 168.)

WEST VIRGINIA

Exemption from Taxation.

"Property used for educational, literary, scientific, religious or charitable purposes: all cemeteries and public property may, by law, be exempted from taxation." (*Constitution*, Art. X, Sec. 1.)

Compulsory Attendance.

"Every person who has legal or actual charge of a child or children not less than seven nor more than fourteen years of age shall cause such child or children each year to attend a free day school for the full school term of the district or independent district in which such person resides; provided, however, that such person shall be exempt from the foregoing requirement for any of the following causes:

"(a) Instruction for a time equal to that required by this act in a private, parochial or other school approved by the district board of education. The principal or other person in control of such private, parochial or other approved school shall upon the request of the district board of education, furnish to said board such information as it may require with regard to the attendance and instruction of pupils between the ages of seven and fourteen years enrolled therein.

"(b) Instruction for a time equal to that required by this act in the home of such child or children or elsewhere by a person or persons who are, in the judgment of the district board of education, qualified to give instruction in the subjects required to be taught in the free elementary schools of this state. The person or persons giving such instruction shall, upon the request of the district board of education, furnish to said board such information as it may require with regard to the attendance and instruction of pupils between the ages of seven and fourteen years receiving such instruction." (*School Code*, 1921, pp. 55–56.)

Unemployed Children.

"Every child over fourteen and under sixteen years of age who is not engaged in some regular employment or business for at least six hours per day or who has not received written permission from the superintendent of schools of the city or county in which he resides, to engage in profitable employment at home, shall attend a public school day or other school day approved by the board of education of his school district or independent school district during the entire time the public schools are in session, subject to such exemptions as are provided for in section one hundred twenty-five of this act, except that no child over fourteen and under sixteen years of age shall be exempt from school attendance as herein required for the reason that he has completed an eight-years' course of study in the elementary and grammar schools or junior high schools of the state, if a high school or other school of advanced grades is provided within two miles of his home.

"Each minor over fourteen years of age and under sixteen years of age who is not in regular attendance upon a public, private or parochial school or who is regularly and lawfully employed in some occupation of service, unless such minor has completed eight years of elementary schooling, shall attend a part-time school or class in the district in which such minor resides or may be employed. Such attendance shall be for not less than four hours per week and not more than eight hours per week for each week which such school or class is in session until the total attendance amounts to at least one hundred and forty-four hours for the school year, except that the school authorities may, subject to the approval of the state superintendent of free schools, permit any such minor to increase the number of hours per week of required attendance and decrease the number of weeks of required attendance. The attendance upon a part-time school or class shall be between the hours of eight o'clock forenoon and five o'clock afternoon." The school attended need not be a public school. (*School Code*, 1921, pp. 58–59.)

Child Labor.

(*School Code*, 1921, pp. 109–113.)

Supervision of Private Teacher-Training Departments.

The State Board of Education, "shall also exercise supervisory control over the teacher training departments of all private or denominational schools which offer courses for the training of teachers, or which maintain classes or departments therefor." (*School Code*, 1921, p. 11.)

Use of English.

"It is approved that the basic language of instruction in the common school branches in all schools, public and private and parochial, shall be in the English language only." (*School Code*, 1921, p. 12.)

Instruction in Civics and History.

"In all the public, private, parochial and denominational schools located within the state of West Virginia there shall be given regular courses of instruction in history of the United States, in civics and the constitutions of the United States and the state of West Virginia, for the purpose of teaching, fostering and perpetuating the ideals, principles and spirit of Americanism, and increasing the knowledge of the organization and machinery of the government of the United States and of the state of West Virginia. The state board of education shall prescribe, with and on the advice of the state superintendent of schools, the courses of study covering these subjects for the public elementary and grammar schools, public high schools and the state normal schools.

"It shall be the duty of the officials or boards having authority over the respective private, parochial and denominational schools to prescribe similar courses of study for the schools under their control and supervision, as is required by the preceding section for the public schools." (*Session Laws*, 1923, Chapter 10, pp. 39–40.)

Fire Prevention.

"The state superintendent of schools is hereby empowered and directed to provide a course of study in fire prevention for use in the public, private and parochial schools of this state, dealing with the protection of lives and property against loss or damage as a result of preventable fires.

"It shall be the duty of the county superintendent, board of education, directors, trustees or other committees or persons having control of public, private and parochial schools in each county, village, city or school district, to arrange for such course of study in fire prevention and to compel its use in each school under its or their control or direction." (*School Code*, 1921, p. 114.)

WISCONSIN

No Appropriation for Sectarian Purposes.

". . . . nor shall any money be drawn from the treasury for the benefit of religious societies, or religious, or theological seminaries." (*Constitution*, Art. I, Sec. 18.)

Compulsory Attendance.

"Any person having under his control any child between the ages of seven and fourteen years, or any child between the ages of fourteen and

sixteen years not regularly and lawfully employed in any useful employment or service at home or elsewhere, shall cause such child to be enrolled in and to attend some public, parochial or private school regularly (regular attendance for the purpose of this statute shall be an attendance of twenty days in each school month, unless the child can furnish some legal excuse), in cities of the first class during the full period and hours of the calendar year (religious holidays excepted) that the public, parochial or private school in which such child is enrolled may be in session; in all other cities not less than eight school months; and in towns and villages not less than six school months in each year, and all children subject to the provisions of this subsection shall be enrolled in some public, parochial or private school within one school month after the commencement of the school term in the district in which such children reside, except that in cities of the first class such children shall be enrolled at the time of the opening of the school which they will attend (and the word 'term,' for the purposes of this subsection, shall be construed to mean the entire time that school is maintained during the school year); . . . . Instruction during the required period elsewhere than at school, by a teacher or instructor selected by the person having control of such child shall be equivalent to school attendance, provided that such instruction received elsewhere than in school be at least substantially equivalent to instruction given to children of like ages in the public, parochial or private school where such children reside . . . . " (*Laws of Wisconsin Relating to Common Schools*, 1919, pp. 445–446.)

Keeping of Record.

"All teachers of private and parochial schools shall keep a record embodying all the data enumerated in this subsection (regarding attendance), and such record shall be open to the inspection of all truant officers at any and all reasonable times; and provided that when called upon by any truant officer, the teachers in private or parochial schools shall furnish in writing on blanks furnished by the truant officer the above-mentioned data in regard to any child or children between the ages of seven and fourteen and fourteen and sixteen who claim, or who are claimed to be in attendance upon said school; and every teacher in a public, private or parochial school shall promptly notify the proper truant officer of any child whose attendance is habitually irregular . . . . " (*Laws of Wisconsin Relating to Common Schools*, 1919, p. 448.)

Use of Public Schoolhouse.

"Upon application of not less than one-half of the voters residing in the district, the school board or other body having charge of schoolhouses or other public buildings or grounds, which are capable of being more widely used as public meeting places for nonpartisan gatherings of citizens, for the presentation and discussion of public questions or for other civic, social or recreational activities, shall allow the use of such buildings or grounds for the open presentation and free discussion of public questions, and may allow the use of such buildings or grounds for such other civic, social and recreational activities as in the opinion of the controlling board do not interfere with the prime purpose of the building or grounds." (*Laws of Wisconsin Relating to Common Schools*, 1919, p. 415.)

Fire Drill.

"The teacher, principal, superintendent or other person having direct charge of and supervision over any public, private or parochial school, high school, college or normal school in this state shall, at least once each month without previous warning, cause all persons in attendance at any such institution to be drilled in proper methods of orderly and rapid departure from each building exceeding one story in height belonging to such institution as if in case of fire." (*Laws of Wisconsin Relating to Common Schools*, 1919, p. 420.)

WYOMING

No Appropriation for Sectarian Schools.

". . . . nor shall any portion of any public school fund ever be used to support or assist any private school, or any school, academy, seminary, college or other institution of learning controlled by any church or sectarian organization or religious denomination whatsoever." (*Constitution*, Art. VII, Sec. 8.)

Compulsory Attendance.

"Every parent, guardian or other person in this state having control or charge of any child or children between the ages of seven and sixteen inclusive, or of any child or children who have not completed the work of the eighth grade and who are mentally capable of doing such work and is not over sixteen years of age, shall be required to send such child or children to a public, private or parochial school, or to two or more of these schools, each school year, during the entire time that the public school shall be in session in the district in which the pupil resides." (*School Laws*, 1923, pp. 13–14.)

Truancy.

(*School Laws*, 1923, pp. 23–24.)

Child Labor.

(*School Laws*, 1923, pp. 14–18.)

SUMMARY OF STATE LAWS and STATE CONSTITUTIONAL PROVISIONS AFFECTING PRIVATE SCHOOLS

Constitutional Provisions Against Appropriations for Sectarian Purposes and Against the Use of Public School Funds for Other than Public School Purposes.

The constitutions of the following 40 states contain such provisions:

Alabama	Indiana	Nebraska	Pennsylvania
Arizona	Kansas	Nevada	South Carolina
California	Kentucky	New Hampshire	South Dakota
Colorado	Louisiana	New Jersey	Tennessee
Connecticut	Massachusetts	New Mexico	Texas
Delaware	Michigan	New York	Utah
Florida	Minnesota	North Dakota	Virginia
Georgia	Mississippi	Ohio	Washington
Idaho	Missouri	Oklahoma	Wisconsin
Illinois	Montana	Oregon	Wyoming

Constitutional Provisions for the Exemption of School Property from Taxation Purposes.

The constitutions of the following 32 states contain such provisions:

Alabama	Illinois	Nebraska	Pennsylvania
Arizona	Indiana	Nevada	South Carolina
Arkansas	Kansas	New Mexico	South Dakota
California	Kentucky	North Carolina	Tennessee
Colorado	Louisiana	North Dakota	Texas
Delaware	Minnesota	Ohio	Utah
Florida	Missouri	Oklahoma	Virginia
Georgia	Montana	Oregon	West Virginia

Compulsory Attendance.

The period of compulsory school attendance for each of the 48 states is given below:

Alabama	8–16	Indiana	7–16; part-time till 18.
Arizona	8–16	Iowa	7–16
Arkansas	7–15; both incl.	Kansas	7–16
California	8–16; part-time till 18	Kentucky	7–16
Colorado	8–16	Louisiana	7–14
Connecticut	7–16	Maine	7–15; till 16, if 6th grade not completed.
Delaware	7–16	Maryland	7–14
Florida	7–16; both incl.	Massachusetts	7–14; continuation till 16.
Georgia	8–14	Michigan	7–16; continuation till 18.
Idaho	8–18; unless 8th grade completed.	Minnesota	8–16
Illinois	7–16; continuation till 17, and after 1925 till 18.		

Mississippi	7–14
Missouri	7–14; continuation till 16.
Montana	8–16
Nebraska	7–16
Nevada	7–18; unless over 14 and 8 grades completed.
New Hampshire	8–16
New Jersey	7–16
New Mexico	6–16
New York	7–14; continuation till 18.
North Carolina	7–14
North Dakota	7–15
Ohio	6–18; unless lawfully employed.
Oklahoma	8–18
Oregon	9–15; continue to 18.
after 1926	8–16; at public school.*
Pennsylvania	8–16
Rhode Island	7–16; must complete 8 grades.
South Carolina	8–14
South Dakota	8–17; unless 8 grades completed.
Tennessee	7–16
Texas	8–14
Utah	8–16; part-time till 18.
Vermont	8–16
Virginia	8–14
Washington	8–15; part-time till 18.
West Virginia	7–14; till 16 if unemployed.
Wisconsin	7–14; till 16 if unemployed.
Wyoming	7–16

Inspection and Supervision of Private Schools, or Their Approval for Compulsory Education Purposes.

Alabama.—Inspection of convents, reformatories, etc,. as to sanitary conditions, manner of conduct, and treatment of inmates.

Connecticut.—State board of education may inspect registers.

Florida.—Inspection of convents, reformatories, etc., as to general condition, and treatment of inmates.

Illinois.—Such charitable institutions as are educational in character, may be visited.

Indiana.—Schools attended by children of compulsory education age are to be "open to the inspection of local and state attendance and school officers."

Kansas.—The state board of education has the power of visitation, to see that the laws regarding the use of the English language and the teaching of civil government are enforced.

Kentucky.—The teachers and the courses of study of private schools must have the approval of the state board of education.

Maine.—For compulsory education purposes, the courses of study and methods of instruction in private schools must have the approval of the state superintendent of public schools.

Massachusetts—A private school giving instruction to children of compulsory education age, must be a day school approved by the school committee.

Michigan.—The superintendent of public instruction and his agents may "investigate and examine" private schools as to "sanitary conditions, courses of study, and qualification of teachers."

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* Law declared invalid by Federal District Court.

Nebraska.—County and city superintendents must inspect private schools at least twice a year, regarding Americanism, course of study and qualification of teachers.
Nevada.—Private schools must give "equivalent instruction fully approved by the school trustees as to kind and amount."
New Hampshire.—Private schools must have the approval of the board of education for compulsory education purposes.
New Mexico.—Private schools must have courses of instruction approved by the state board of education.
New York.—The commissioner of education "shall cause to be inspected and supervise the instruction" in patriotism and citizenship.
North Dakota.—For compulsory education purposes, private schools must have the approval of county superintendents.
Pennsylvania.—Inspection of all children's institutions as to instruction, discipline, care, etc.
Rhode Island.—Private schools must be approved for compulsory education purposes.
South Carolina.—Private schools "must be supervised by the county superintendent of education or by the supervisor of public schools." Private schools must also be approved.
South Dakota.—Private schools must be approved. The county superintendent "shall exercise the right of visitation and inspection" of private schools and private instruction.
Washington.—Private schools should be examined and approved by the county superintendent. All institutions caring for children are to be visited twice a year.
West Virginia.—Private schools must be approved for purposes of compulsory education. The state board of education is to supervise all teacher-training departments.
Wisconsin.—Attendance records are to be open to the inspection of proper authorities.

General Curriculum.

Alabama —Enumerated branches are to be taught in every elementary school
California.—The several branches taught in the public schools.
Colorado.—Enumerated branches.
Connecticut.—Enumerated branches.
Delaware.—The subjects prescribed for elementary schools.
Georgia.—"The ordinary branches of an English education."
Idaho.—Enumerated branches.
Illinois.—Such branches as are taught in public schools.
Indiana.—Enumerated branches.
Iowa.—Enumerated branches.
Maine.—"Minimum subjects prescribed for approved schools."
Maryland.—Subjects usually taught in public schools.
Massachusetts.—All studies required by law.
Michigan.—Same as public schools.
Montana.—Enumerated subjects.
Nebraska.—Substantially the same instruction as in public schools.

Nevada—Equivalent instruction.
New Hampshire.—Substantially the same subjects as in public schools.
New Jersey.—Enumerated branches.
New Mexico—Courses of instruction approved by the state board of education.
New York.—Enumerated branches.
North Dakota.—Branches usually taught in public schools.
Ohio.—Enumerated branches.
Oregon.—Branches usually taught in public schools.
Pennsylvania.—Enumerated branches.
Rhode Island.—"Substantially equivalent" instruction.
South Carolina—Such subjects as are required in public schools.
South Dakota.—Enumerated branches.
Vermont.—"The same education" as in public schools.

The Teaching of Special Subjects:
The Constitution, Civics, and Patriotism.

Alabama.—Community civics.
California.—The duties of citizenship and local self-government. The Constitution of the United States, in the 8th grade and throughout high school.
Connecticut—Citizenship.
Delaware.—The Constitutions of the United States and Delaware, in the 8th grade and throughout high school.
Idaho.—The Constitution of the United States, in the 6th and 8th grades, throughout high school, and in colleges and universities.
Iowa.—Civics in elementary and secondary schools.
Kansas.—Civil government, patriotism and the duties of citizenship.
Kentucky.—Constitution of the United States in 8th grade, and throughout high school.
Louisiana.—Instruction in the constitutional system of the state and national government, and the duties of citizenship.
Maine.—Civil government, in all elementary and high schools.
Michigan.—Constitutions of the United States and Michigan, in the 8th grade and throughout high school.
Minnesota.—The Declaration of Independence and the Constitution of the United States, in the 8th grade and throughout high school.
Nebraska.—Civil government, state and national.
New Hampshire.—Constitutions of the United States and New Hamsphire, in the 8th grade and throughout high school.
New Jersey.—Constitution of the United States, beginning with the 7th grade, lasting through high school
New York.—Patriotism and citizenship.
Ohio.—American government and citizenship.
Oregon.—Constitution of the United States.
Pennsylvania.—Civics in elementary school. The Constitution of the United States in the 8th grade, and throughout high school.
Rhode Island.—Government of Rhode Island in the 7th and 8th grades; the Constitution and government of the United States and Rhode Island in high school.

South Dakota.—Patriotism throughout the elementary course. Constitutions of the United States and South Dakota, in 8th grade and throughout the high school.
Texas.—Good citizenship.
Utah.—Constitution of the United States.
West Virginia.—Civics, and the Constitutions of the United States and West Virginia.

English as the Language of Instruction. Teaching of Foreign Languages.

Alabama.—English shall be the only language employed and taught in the first six grades.
Arkansas.—English shall be the basic language of instruction in common school branches.
California.—All schools shall be taught in the English language.
Colorado.—The common branches shall be taught in English. A foreign language may not be taught in public elementary schools.
Connecticut.—English shall be the medium of instruction and administration. Instruction in any other language shall not be for more than one hour a day.
Delaware.—All elementary school subjects shall be taught in English.
Idaho.—All subjects shall be taught in English.
Illinois.—English shall be used in teaching the elementary branches.
Indiana.—All subjects in elementary schools shall be taught in English. The teaching of German in the first eight grades is forbidden. In the opinion of the Attorney-General, religious subjects may not be taught in German.
Iowa.—All secular subjects shall be taught in English. No foreign language may be employed or taught below the 8th grade.*
Kansas.—The English language shall be used exclusively as the medium of instruction.
Maine.—English shall be the basic language of instruction in common school branches.
Massachusetts.—Studies required by law shall be taught in English.
Michigan.—All subjects required for the eighth grade diploma shall be taught in English.
Minnesota.—All common branches shall be taught in English.
Nebraska.—All subjects in elementary schools shall be taught in English. A foreign language shall not be taught below the 8th grade.*
Nevada.—All subjects in all schools shall be taught in English.
New Hampshire.—English shall be used in the teaching of all secular subjects, and for administration.
New Jersey.—Branches required by law shall be taught in English.
New York.—Branches required by law shall be taught in English and from English texts.
Ohio.—In the first seven grades, instruction shall be in English only. German shall not be taught below the eighth grade.*
Oklahoma.—English shall be the language of instruction in all elementary schools.
Oregon.—English shall be the language of instruction in all schools.

* See adverse decision of U. S. Supreme Court.

Pennsylvania.—Branches required by law shall be taught in English and from English texts.
Rhode Island.—All subjects, except foreign languages, shall be taught in English.
South Carolina.—Instruction is to be given in English.
South Dakota.—English shall be the sole medium of instruction in branches required by law.
Texas.—English shall be the basic language of instruction.
West Virginia.—English shall be the basic language of instruction in common school branches.

Qualification of Teachers.

Alabama.—Teachers giving instruction to children of compulsory school age, must be regularly certificated.
Arizona.—The board of trustees of the school district and the county superintendent must be satisfied that private schools are taught by competent teachers.
California.—Private schools attended by children of compulsory school age must be taught by persons capable of teaching.
Kansas.—A private school must be conducted by a competent instructor.
Michigan.—After September 1, 1925, private school teachers must have the same certificates as public school teachers. Those who have taught for at least ten years are excepted.
Minnesota.—Private school teachers must be qualified to teach in the English language.
Mississippi.—A private school must be taught by a competent instructor.
Nebraska.—Private school teachers must have the same certificates as public school teachers.
New Jersey.—A private school must be taught by a competent teacher.
New York.—A private school must be taught by a competent teacher.
South Dakota.—Private school teachers must have the same certificates as public school teachers.

Reports Required.

Alabama.—Statistical.
Connecticut.—Statistical.
Delaware.—Statistical.
Illinois.—Statistical.
Indiana.—Enrollment and attendance.
Iowa.—Statistical.
Kentucky.—Attendance.
Maine.—Enrollment.
Maryland.—Enrollment and attendance.
Massachusetts.—Statistical.
Michigan.—All reports required of public schools.
Minnesota.—All reports required of public schools.
Mississippi.—All reports required of public schools.
Nebraska.—Enrollment and attendance.
New Hampshire.—Statistical.
New Jersey.—Statistical.
New Mexico.—Attendance

New York.—All lawfully required reports.
Ohio.—Enrollment and attendance.
Pennsylvania.—Enrollment and attendance.
Rhode Island.—All reports required of public schools regarding enrollment, attendance and instruction.
South Carolina.—Statistical.
South Dakota.—Attendance.
Texas.—Enrollment.
Washington.—Attendance.
West Virginia.—Attendance and instruction.
Wisconsin.—Attendance.

Medical Inspection.

Florida.—All school children shall be examined once each school year.
Indiana.—There shall be medical inspection of all persons attending or employed in all schools.
New Hampshire.—A medical inspector shall be assigned to each school.
Rhode Island.—Medical inspection of all schools shall take place at least once each year.
Vermont.—Medical inspection of private schools shall take place when requested.

Oath of Allegiance.

An oath of allegiance is required of all teachers in the following states: Colorado, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota.

Religious Garb Acts.

The wearing of religious garb in public schools is forbidden in Nebraska, Oregon, and Pennsylvania.

Supreme Court of the United States

OCTOBER TERM, 1924.

No. 583.

WALTER M. PIERCE, as Governor of the State of Oregon; ISAAC H. VAN WINKLE, as Attorney General of the State of Oregon, and STANLEY MYERS, as District Attorney for Multnomah County, State of Oregon,

Appellants,

vs.

THE SOCIETY OF THE SISTERS OF THE HOLY NAMES OF JESUS AND MARY,

Appellee.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON.

ORAL ARGUMENTS ON BEHALF OF APPELLEE IN SUPPORT OF DECISION OF UNITED STATES DISTRICT COURT OF OREGON HOLDING UNCONSTITUTIONAL AND VOID THE COMPULSORY PUBLIC SCHOOL LAW OF THAT STATE ENACTED UNDER INITIATIVE PETITION, NOVEMBER 7, 1922 (296 FED. 928).

(First Day)

Supreme Court of the United States

October Term, 1924.

No. 583.

Walter M. Pierce, as Governor of the State of Oregon; Isaac H. Van Winkle, as Attorney General of the State of Oregon, and Stanley Myers, as District Attorney for Multnomah County, State of Oregon,
Appellants,

vs.

The Society of the Sisters of the Holy Names of Jesus and Mary,
Appellee.

Appeal from the District Court of the United States for the District of Oregon.

ORAL ARGUMENT OF MR. GUTHRIE ON BEHALF OF APPELLEE IN SUPPORT OF DECISION OF UNITED STATES DISTRICT COURT HOLDING UNCONSTITUTIONAL AND VOID THE COMPULSORY PUBLIC SCHOOL LAW OF THAT STATE ENACTED UNDER INITIATIVE PETITION, NOVEMBER 7, 1922 (296 FED. 928).

Washington, D. C., Monday, March 16, 1925.

The above entitled cause came on for oral argument at 3:22 o'clock p. m.

PRESENT: The Chief Justice, Mr. Justice Van Devanter, Mr. Justice McReynolds, Mr. Justice Brandeis, Mr. Justice Sutherland, Mr. Justice Butler, Mr. Justice Sanford and Mr. Justice Stone.

APPEARANCES:

For the Appellants:

George E. Chamberlain, for the Governor of Oregon;

Willis S. Moore, Assistant Attorney General, for the Attorney General of Oregon.

For the Appellee:

William D. Guthrie and J. P. Kavanaugh.

Mr. Guthrie. May it please the Court: On behalf of the appellee, I desire to make an application for extra time. It will be practically impossible for counsel properly to present the case of the appellee in No. 583 in less than an hour and a half. There are two counsel to be heard, counsel from Oregon and myself, and I am to open.

I cannot, in my judgment, after a most careful study of the situation, properly open this extremely important case on behalf of the appellee without at least one hour's time, and my associate, Judge Kavanaugh, should have at least half an hour. I, therefore, earnestly request that the Court will extend to the appellee in No. 583 half an hour of extra time, in what seems to us to be the most important case of this generation.

The Chief Justice. How many counsel are there in the two cases, Mr. Guthrie?

Mr. Guthrie. There are two counsel in our case and one counsel in No. 584 who desire to be heard for the appellees, respectively; and I understand that there are three counsel who desire to be heard in the two cases on behalf of the appellants, the Governor and the Attorney General of the State of Oregon.

The Chief Justice. Well, the two cases involve practically the same question, do they not?

Mr. Guthrie. They involve the same statute, and practically the same question, except that in the first case there is an additional question raised in the briefs of the appellants as the real reason for this enactment, namely, that the appellee, the Society of these Catholic Teaching Sisters, conducts religious schools; whereas in No. 584, although it was originally an Episcopal school, it is now entirely non-sectarian and a military school for boys.

The Chief Justice. Were the cases advanced together?

Mr. Guthrie. No, they were advanced separately; although the application to advance them was made at the same time by the State. I think that the applications were entitled in both causes.

The Chief Justice. I supposed they were intended to be heard together.

Well, I will tell you what I will do, Mr. Guthrie. Yours is the first case. Have you any arrangement with counsel in the other case as to the disposition of time to be awarded?

Mr. Guthrie. Mr. Veatch, who represents the appellee in No. 584, tells me that he will be satisfied with half an hour.

The Chief Justice. Well, then, we will give to No.

583 an hour's extra time. That is, you will have three hours for No. 583, an hour and a half on each side. And for the case which succeeds, I assume that there will have been so much discussion of the same question that they will have to be content with the regular time; that is, one hour on each side.

Mr. Justice Holmes is not able to be here today. Therefore, we would like to vouch him in, so that he may read the briefs and unite with the Court in reaching a conclusion. I assume there will be no objection to that.

Mr. Moore. No, your Honor.

Mr. Guthrie. That is entirely satisfactory to us.

The Chief Justice. It is quite possible, and in fact, we hope, that Mr. Justice Holmes will be here tomorrow and will hear the remainder of the argument.

Mr. Assistant Attorney General Moore thereupon opened the appeal on behalf of the appellants, and was followed by Mr. Guthrie on behalf of appellee.

Mr. Guthrie. May it please the Court: I represent the appellee Society, a Catholic teaching sisterhood, which has been teaching children in Oregon since 1859, that is to say, during the past sixty-six years. As far back as 1866, the Society had established so high a reputation that its academy at Portland was incorporated by the State of Oregon, and in 1880 the Society itself was duly incorporated under the laws of the State.

It now has, as the bill alleges and as is admitted, for the State presented no pleading or proof,—it now conducts eleven primary schools, of which five are academies and six parochial schools, at all of which religion is regularly taught. These eleven schools, in which the primary

and elementary grades are taught, are attended by children between the ages of eight and sixteen years, and four of them are boarding schools. The Society has also eight preparatory or secondary schools and a college. It instructs in Oregon today over 2,600 children, of whom 1,980 are children between the ages of eight and sixteen, including 100 orphans between those ages, of whom it has charge and custody in its orphan asylum located in Clackamas County in the State of Oregon.

In order to simplify the argument, I propose, after endeavoring to eliminate what is not involved and stating some important facts shown by this record, to discuss, with your Honors' indulgence, the questions of law presented on this appeal in the following order:

First: The appellee Society as a corporation is within the provisions of the enactment in question, in that it has charge and custody of children in its boarding schools and orphanage and in that it is otherwise directly affected in its property rights by the provisions in question, and therefore is entitled to sue in its own right.

I may state at this point that I do not understand that any waiver of the Attorney General in regard to our right to sue under the Fourteenth Amendment, or in regard to the alleged prematurity of the suit, can be of much avail. We must satisfy your Honors that you have jurisdiction in equity as well as under the Constitution; and without so satisfying you, we cannot establish jurisdiction in this Court by waiver or consent. But those two questions are fully covered in our briefs.

Secondly: Even if not directly affected or entitled to sue in its own right, the appellee Society is entitled to complain of a law which directly destroys its patronage and prevents parents and guardians from sending their

children to its primary schools, and which practically deprives its teachers in the primary grades of the right to pursue their profession. We conceive that that proposition was recently decided by this Court in the *German Language cases* (262 U. S. 390 *et seq.*), in which Mr. Justice McReynolds wrote the opinion of the court, as well as in *Terrace* v. *Thompson* (263 U. S. 197) when Mr. Justice Butler wrote the opinion.

We contend that the suit was not prematurely brought simply because its penalties do not begin to operate or become effective until September, 1926, because, as matter of fact, it is alleged, and not denied, that its injurious and destructive effects on appellee have been immediate and are so conceded on this record.

Thirdly: I shall contend that the right to conduct a private school is a right partaking of both liberty and property, and as such this corporation, the appellee Society, is entitled to protection under the Fourteenth Amendment against enactments which practically deny it either right.

There is an argument in the brief of the Governor that corporations have no liberties and can assert no such claim. We think that claim untenable and not decided in the cases cited. But whether we are dealing with liberty or with property is immaterial; the right interfered with and sought to be destroyed here partakes of the nature of both liberty and property. And, hence, we insist that in either aspect, and certainly in the property aspect, we are entitled to relief if this act be unconstitutional. This court is constantly granting corporations such relief.

Fourthly: We then argue that the conceded power of the State to regulate private schools and to prescribe

the qualifications of teachers therein and their being licensed does not extend to the power of prohibition or destruction, which is necessarily involved in a law requiring all children between eight and sixteen years of age to be sent to the public schools.

Your Honors will find in the brief of the Attorney General the concession that the reason of this act is apparent, that the reason which prompted the people is apparent, and that it was their intention to compel children between the ages of eight and sixteen to be educated exclusively in the public schools.

Fifthly: We shall urge that the right of parents to send their children to private schools of their own choice is a fundamental, natural and sacred right, which is part of the liberty guaranteed to us all and protected by the Fourteenth Amendment against undue denial by the State.

And likewise we shall urge that the right of teachers in the primary grades of private schools to pursue their time-honored and universally esteemed, and, as Mr. Justice McReynolds said in the *German Language* cases, useful calling, partakes of the nature of both liberty and property, and cannot be arbitrarily denied by a State.

It is said in the brief of the learned Attorney General that the rights of teachers are not affected, because they may go and secure employment in the public schools. But such argument is not worthy to consume any of the very limited time at my disposal for its ready refutation. It is fully covered by the decision in the *German Language* cases.

And, finally, we shall contend that if the true and real motive and intent of this measure, as deliberately disclosed and confessed in the brief filed in this Court on

behalf of the Governor of the State, and as deliberately disclosed and confessed likewise in the brief filed on behalf of the Attorney General of the State—that if the true and real intent and motive, as well as the practical effect, of the enactment in question, constitute an attempt to deny religious liberty or freedom of conscience to those parents who desire to send their children to schools of their selection, where the doctrines of their own faith—be it Catholic, Protestant, or Jewish—can be taught them, the enactment would likewise constitute a violation of religious liberty, which is also guaranteed by the Fourteenth Amendment against undue denial by a State; but this point has not yet been expressly decided by this Court, although within the principle and spirit of Mr. Justice McReynolds' opinions in the *German Language* cases.

If your Honors please, it is important for you to note at the outset that no question is involved as to the power of a State to enact a *compulsory education law* and to require that children shall attend *some* school, and correlatively as to the power and duty of a State to provide at public expense schools where free tuition of children may be obtained.

Compulsory education laws, as Mr. Justice Sanford has just pointed out to the learned Assistant Attorney General, are fundamentally different from *compulsory public school laws* compelling all parents under severe penalties to send their children to a public school. Compulsory education laws are in effect in every State of the Union, as well as in the District of Columbia, and have been in force in Oregon for more than thirty years.

The present enactment, however, is not a *compulsory education law,* such as is in force in every other State, requiring children to be educated and to attend *some* school. But it is a *compulsory public school law,* requiring children to attend a public school, under penalties of fine and imprisonment against the parents and, in practical effect, as indeed was intended and as the learned Assistant Attorney General practically so conceded in his argument, it would suppress and destroy all private schools.

In fact, the Attorney General says in his brief (at p. 72) that "the people of the state of Oregon, under their initiative powers, have enacted a law requiring that all children shall be educated exclusively"—*exclusively* is his very word—"in the public schools."

I am using throughout my argument the term "private school" in the comprehensive sense generally employed in statutes, as comprising schools other than public schools maintained by the State; and I include therein parochial, denominational and all other religious schools, so-called, because they all teach the doctrines of some religion—such religious schools as have been in existence and operation in this country nearly three centuries without interference by any legislature until this Oregon law.

The Chief Justice. Mr. Guthrie, we will suspend now.

Thereupon, at 4:30 o'clock p. m., the Court adjourned until Tuesday, March 17, 1925, at 12 o'clock noon.

(Second Day.)

SUPREME COURT OF THE UNITED STATES,

October Term, 1924,

No. 583.

Walter M. Pierce, as Governor of the State of Oregon; Isaac H. Van Winkle, as Attorney General of the State of Oregon, and Stanley Myers, as District Attorney for Multnomah County, State of Oregon,
Appellants,

vs.

The Society of the Sisters of the Holy Names of Jesus and Mary,
Appellee.

Washington, D. C., Tuesday, March 17, 1925.

The above entitled cause came on for further oral argument at 12 o'clock noon.

Present: The Chief Justice, Mr. Justice Van Devanter, Mr. Justice McReynolds, Mr. Justice Brandeis, Mr. Justice Sutherland, Mr. Justice Butler and Mr. Justice Sanford.

The Chief Justice. The case now on hearing is No. 583, Walter M. Pierce, Governor of the State of Oregon, *et al.*, appellants, *vs.* The Society of the Sisters of the Holy Names of Jesus and Mary, Appellee.

Before you go on, I want to say that Mr. Justice Stone has been called away by the death of a near friend, and will not return until tomorrow morning; but we will consider him in the case, he having been present at the beginning of the hearing.

Mr. Guthrie. That will be satisfactory to all, your Honor.

The Chief Justice. You may proceed, Mr. Guthrie.

Mr. Guthrie. May it please the Court: As the adjournment was taken yesterday, I was stating that no question was involved as to the power of the State to enact compulsory education laws requiring children to attend some school, nor as to the duty of the State to provide means for those who would otherwise be untaught. Every state in the Union has such a compulsory education law, as well as the District of Columbia. Last month Congress passed an act applicable to the District of Columbia, printed in our appendix I, in which it expressly provided that education in a private or parochial school should be accepted as a substitute for education in a public school, provided only that the Board of Education deemed that the instruction given in such private or parochial school, or privately, was equivalent to the instruction given in the public schools.

All of our States except Oregon distinctly recognize private or parochial schools as proper substitutes, either *eo nomine* or under terms that clearly include them.

Twenty-four of the States expressly provide in their statutes that attendance at a parochial school shall be accepted, and as I have just stated, the remaining States, although in differing language, recognize that education at a private school or at a denominational school shall be acceptable so long as the children of the State are educated.

This fact, and the fact of the absence of similar legislation to this Oregon enactment, certainly attest an exceptionally widespread belief and an exceptionally long tradition—for it goes back to Colonial times, and all

through modern times—that education should be free, that the parents should have the right to determine where their children should go to school, and that regulation can readily reach every possible evil that you are asked by the Assistant Attorney General to presume, without a scintilla of evidence or suggestion in the record, or in anything of which the court below or here could take judicial notice. He argues that you may presume that sufficient and satisfactory reasons existed in the minds of the people of Oregon, or, rather, in the minds of the majority who imposed this enactment upon the rest of the people of the State; for the vote was only 115,506 for to 103,685 against.

In a word, Oregon alone prohibits parents from sending their children to private or religious schools, striking at Catholic and Protestant alike. There are many Protestant religious schools in Oregon, as the record shows—Catholic, Episcopalian, Lutheran, Adventist and other denominations, and there have been from the beginning, and long before any public school system was established in Oregon or any compulsory education law passed in Oregon.

Oregon alone has attempted to suppress private and religious schools. If I may quote Milton's famous phrase, in the second book of "Paradise Lost", Oregon alone has that "bad eminence" of intolerance and antipathy for freedom of education.

All other States have recognized the philosophy of this subject, and that is that the end and the goal of the State, the legitimate end and the legitimate goal of the State, should be and really is *education,* and not the particular form in which the education shall be imparted.

This was admirably put or expressed by the Supreme

Court of Massachusetts, when Mr. Justice Holmes was on that bench, in the case of *Commonwealth* v. *Roberts* (159 Mass. 372), and I shall read a sentence from that opinion, which your Honors will find quoted in Mr. Veatch's brief in the case of the *Hill Military Academy* No. 584, namely:

> "The great object of these provisions of the statute (that is, the Massachusetts compulsory education law) has been that all children shall be educated, not that they shall be educated in any particular way. To this end public schools are established, so that all children may be sent to them unless other sufficient means of education are provided for them."

And all through the history of Massachusetts (which was rather prominent in intolerance in the Seventeenth Century), from the very first law which they passed in regard to education, they recognized the right of the parent to have children educated otherwise than in the public schools established by the Puritans.

Nor in this case, if your Honors please, is there any question as to the power of a State to regulate as distinguished from prohibition and suppression. A State may require licenses, both of the schools and of the teachers. You have so held. A State may reasonably prescribe necessary studies. A State may prohibit the teaching of doctrines inimical to our form of government and to the duties and standards of good and loyal citizenship. But a State cannot prohibit the teaching of religion, except, of course, in case the tenets of the particular religion—for example, recalling the case in this Court relating to the Mormons—in case the doctrines of a religion are subversive of the common ideals of morality, or are such doctrines as those of extreme pacifists

who claim the right to teach that children are justified in refusing military service and may be taught to be actively disloyal.

All these reasonable branches of regulation can be exercised by any State, and have actually been exercised in Oregon as reference to the statutes collated in our appendix I will readily show.

Thus, the school boards in Oregon have full power to determine that the children shall be taught in the private schools the same subjects that they are taught in similar schools maintained by the State. Teachers in Oregon private schools are required to take the same oath as public school teachers as to reverence for law and order and undivided allegiance to our Governments. All private and parochial schools are required by statute to give regular courses in the Constitution of the United States, and a most stringent statute, such as your Honors sustained in *Gilbert* v. *Minnesota* (254 U. S. 325), prohibits, under very severe penalties, up to ten years of imprisonment, the teaching of syndicalism, sabotage and other forms of socialistic and communistic doctrine.

I shall not argue the obvious: that the effect as well as the intent of this statute was to prohibit and destroy religious and other private schools. They were to be suppressed no matter how superior their instruction; no matter how well conducted; no matter how desirable and necessary for certain children who needed particular discipline or particular instruction. The good and the inferior alike were to be suppressed, without any complaint or any investigation, without any expert report or commission, without the slightest ground being assigned, except—that its promoters desired that all children should be compelled to be educated exclusively along the

same lines of uniformity of instruction established by bureaucratic and political school teachers whether competent or not.

The court below, with ample knowledge of the conditions actually existing in Oregon, declared, with a persuasive authority hardly to be denied, for all three of these learned Federal judges had been on the bench in Oregon for more than thirty years, one of them, District Judge Bean, for more than forty years, and two of them had been Chief Justice of the State of Oregon: they unanimously affirmed that the act could not be more effective for utterly destroying the business and occupation of the plaintiffs' schools, except, perhaps, the colleges and preparatory grades, if it had been entitled, "An Act to prevent parochial and private schools from teaching the grammar grades."

Nor shall I argue, for the time at my disposal is altogether too short, the far-fetched suggestion contained in the brief filed on behalf of the Governor of the State, that the children of parents who desire that they shall have religious instruction are in no way interfered with, because they can send their children to a private school before the public school opens, and send them to a private school after the public school has closed.

That very suggestion was made in the *German Language* cases, and Mr. Justice McReynolds quoted from the court below, that such a proposition was little short of absurd because, of course, there is a limit to the number of hours that children can be kept confined in school.

Hence, in view of the candid and creditable admission of the learned Assistant Attorney General of Oregon that the enactment now before the Court would inevitably suppress every private school in the State of Oregon teaching

the primary and grammar school grades, I desire to affirm as emphatically as I can that, if held constitutional by this Court, the decision in these cases would necessarily recognize a legislative power in the several States to suppress every private, every denominational, every parochial and every religious private school in the country. It would recognize the power to close those great Episcopal schools of Massachusetts, Groton and St. Marks, St. Paul's in New Hampshire, Kent and Pomphret and St. Margaret's in Connecticut, and throughout the country as the admirable and eloquent brief filed by the counsel of the Protestant Episcopal Church as *amici curiae* conclusively shows; and it further shows that they have one hundred such religious schools where children of the Episcopal faith are being taught their religion. And as the brief on behalf of the Jews by Mr. Louis Marshall as *amicus curiae* equally shows as to his ancient faith.

Furthermore, it needs no argument, for it is indeed manifest, that if the power of a State to suppress primary schools be unlimited, as the Attorney General literally asserts in the opening part of his brief, and as the advocates of this measure and counsel for the State of Oregon have argued in their briefs, and perhaps will argue orally, if such power be unlimited, where can it be stopped? The State surely need not then stop at the age of sixteen or with primary education; it can at will similarly legislate as to secondary and preparatory schools and colleges, and suppress all the private educational institutions throughout the country, on the plea, as stated in the brief filed on behalf of the Governor of Oregon, that they may possibly teach prejudicial, unpatriotic, or subversive doctrines to the future men and women of our

country; that they may become "red" and teach subversive and revolutionary doctrines, and that there is no way to prevent these private schools "from being controlled and conducted"—I am quoting their language—"by bolshevists, syndicalists and communists", as suggested on page 46 of their brief. You are further asked in argument to assume without proof of any kind, that the private and parochial schools of Oregon may possibly be inferior to the public schools maintained in that State and that the measure was passed in good faith to secure a better education for the children of Oregon now attending private and parochial schools.

But I cannot, unfortunately, for want of time, argue any further upon that question, or show you how, in the Federal Census of 1920, for example, the fact was shown that 2,280 of the public schools in the State of Oregon were one-room schools, where all grades and both sexes were intermingled, and that 1,633 of the school teachers, fully 21 per cent., had not even had a training equal to a normal school or its equivalent. The National Educational Association published these facts to the country, showing conditions not alone in Oregon but elsewhere that ought to be remedied, if the beneficent system of public schools was to do the work which it ought to do and which the taxpayers of the United States are now paying over one billion dollars a year to enable it to do.

I cannot likewise, for want of time, address my argument to the right to sue, or the alleged prematurity of the suit. If your Honors desire any instruction upon that point, my associate, Judge Kavanaugh, will address himself to it. But, to repeat, it is fully covered in the briefs filed on behalf of the appellee Society.

Nor shall I argue, because it is fully covered in our

briefs, in refutation of the contention that we are not directly affected, because it is only the parent, the guardians and the custodians of children who are menaced with punishment as for a misdemeanor. I have only time to refer to the case of *Truax* v. *Raich* (239 U. S. 33), where Mr. Justice Hughes covered the point quite conclusively; to the case of the *Evangelical Lutheran Synod* v. *McKelvie*, reported under the title of *Bartels* v. *Iowa* (262 U. S. 404), where Mr. Justice McReynolds again fully covered the point, and to the more recent case of *Terrace* v. *Thompson* (263 U. S. 197) where Mr. Justice Butler reviewed and analyzed the point and clearly showed that it was not necessary that the act apply directly to the complainant provided the necessary effect of interference with the constitutional rights of others was to affect and prejudice such complainant.

But our appellee Society has not only six parochial schools, but five private academies, four of which are boarding schools. Hence it literally comes within the language of the enactment of a person having control or charge or custody of a child. Of course, if they did not send the children in their boarding schools to the public school of the neighborhood, they would incur the penalties of this enactment.

Again, as to the orphanage in Clackamas County. There 100 orphans between the ages of eight and sixteen are in the charge and custody of the Sisters of the appellee Society. Of course, they have both charge and custody of these children; and of course they would directly incur the criminal penalties of this enactment if they did not send these orphans to the public school of the neighborhood. And yet it appears affirmatively that there is no public school in the county that could hold

them; that the same is quite true elsewhere, and that the State, in order to comply with this act, would have to expend over $4,000,000. So the bill alleges and so the appellants admit.

The enactment now before the Court for consideration in its constitutional aspect affects and involves the constitutional rights of four classes of persons: that is, parents, children, teachers in primary grades, and owners of primary schools—and all the rights partake of the nature of the right of liberty and of the right of property; all are interdependent, and all, I submit, are protected by the Fourteenth Amendment from denial by a State.

First and foremost, the law involves the sacred rights of parents in the discharge of their duty to educate their children, a truly sacred right and duty, which Blackstone declared 150 years ago, and Puffendorf long before him, was the greatest of all the rights and duties of parents.

It next involves the right of children, for they often, as all parents well know, instinctively have decided preferences, to which frequently parents and guardians wisely conform. What parent has ever dealt with the education of a child between eight and sixteen but what that element has entered into his fair and just consideration? Is not the number of parents innumerable who have conceded something to the preference of their children as to the school they shall attend? And yet it is said in one of the briefs filed on behalf of the State of Oregon that it is perfectly absurd to argue that children have any constitutional rights, or that they can be allowed to exercise any selection or preference as to the school they shall attend.

This enactment also involves the rights of teachers, men and women, who devote their lives to the noblest of all callings, the education of children; a profession which has existed and been highly esteemed in every age, in every country and under every civilization, even long before Christianity; and which, to repeat, was recognized by Mr. Justice McReynolds in the conclusive opinion which he wrote in the *German Language* cases, not only as a noble profession, but as a most useful one.

And finally, it involves the rights of the owners and managers of schools who have devoted their property and their services to maintaining private schools, which have existed from time immemorial, and for three centuries have furnished the means by which the *élite* of the American colonists and of the American Republic since 1776, have so largely been educated and trained in the duties and responsibilities of life and citizenship. It would truly be no exaggeration to say that practically every member of the Constitutional Convention of 1787 had been educated in a private school, and mostly in a religious school, and that every signer, or almost every signer, of the Declaration of Independence had been similarly educated.

It is consequently no exaggeration for us to urge that no more far-reaching and momentous question, or one more closely affecting American institutions and the inherited rights or liberties and the freedom of conscience and religion of our people, or a greater number of the people of the United States, or one more deeply reaching to the very roots and springs of American constitutional liberty, and of all those sacred rights which free men cherish and free governments are established to secure and protect, has ever been submitted to this Court for

decision. And if ever these rights are denied, if that day shall ever come, our Governments will not be worth while striving to maintain for we shall no longer be free men or worthy to enjoy liberty.

I would, furthermore, like to analyze briefly the service rendered in the United States to education generally by private schools, and the universal recognition of valuable service by all American educators, by the officials of our National Government in charge of the United States Bureau of Education, by the leaders of the American Educational Association. They all with one concordant voice recognize, not only that the experimental work that has and is being done in private schools is of immense value to the community, but the fact that it is the work done there and the standards established in those schools that have lifted the standards of the public schools, and that if these private schools were abolished, as one writer says, there would inevitably follow the degradation of the whole public school system.

Your Honors, I want to point out for your reflection that Oregon was not choosing between two competing liberties which cannot coexist. These liberties in education have existed practically for all time in this country and in other countries. The liberty to conduct a private school does not abridge or interfere with the liberty of the district or community to maintain a public school. As private schools generally charge tuition fees and equally promote education, and the public schools are free, there is no interference or competition with the resources of the public schools. In fact, the more who attend private schools, and there obtain a satisfactory education at least equal to the public school of the neighborhood, the less must be the public burden and tax levy.

The liberty of teachers who devote themselves to giving instruction to children in the primary grades of private and parochial schools does not surely abridge or interfere with the liberty of other teachers to give instruction in the similar grades of public schools.

The liberty of parents to send their children to private schools does not abridge or interfere in the slightest or remotest degree with the liberty of other parents to send their children to public schools.

The learned Attorney General further contends, that, in order to sustain this law, it is your duty to indulge in the presumption, as a matter of fact, that there did exist in Oregon exceptional circumstances. But I submit that no such question can affect the fundamental question of power to suppress all private and parochial schools however well and competently conducted and that no such argument was submitted to the court below, where there was not the slightest suggestion or pretense either in argument or brief that the private or parochial schools were in any way inferior to the public schools, or that they were teaching detrimental doctrines.

In fact, Judge Wolverton in his opinion, after an experience of thirty odd years upon the bench in Oregon, repudiated the suggestion, and said that there was no proof whatever and that the contrary was the fact, in regard to the alleged inferiority—if that had been claimed and it had not been claimed—on the part of parochial and other private schools.

If your Honors please, I now want to refer briefly to another aspect. It is, I must confess, with great apprehension and disappointment that I am compelled to gallop through this very important case in the limited time allotted to me. I want to refer to the official pamphlet

issued by the Secretary of State of Oregon at the time this law was submitted to the people, as required by their laws, and which contains the arguments for and the arguments against this enactment as then proposed by initiative.

Among other things, in the argument in support of this law by the promoters responsible for this law, promoters who, in one of the statements contained in this official pamphlet, are called "outside agitators," it was stated by them as follows:

> "Our children must not under any pretext, be it based upon money, creed or social status, be divided into antagonistic groups, there to absorb the narrow views of life as they are taught."

Against this proposal, which meant undoubtedly, if it had any sense or purpose, that the promoters of this measure wanted all the children of the State to be of one creed and of one religion dictated by them—against such a proposal the religious organizations of the State protested in this official pamphlet.

You will find the Evangelical Lutheran Synod protesting; you will find twenty-five Presbyterian Ministers protesting; you will find the Episcopal Bishop protesting; you will find citizens of all faiths protesting; you will find the principals of four non-sectarian schools protesting; you will find the Seventh Day Adventists protesting, and you will find the Catholic Civil Rights Association protesting. The arguments in the official pamphlet should have and deserve the most careful study.

Yet it was argued yesterday to your Honors by the learned Assistant Attorney General that there was no religious issue involved. Notwithstanding his brief, in which he raised the religious issue although it was not

raised in the court below, he proclaimed to your Honors that he disclaimed any such intention of raising a religious issue on the part of the people of the State of Oregon, because, as he stated to you, they were a religious people.

Now, let me read to your Honors an extract which is on page 39 of our appendix I. It is part of the noble and exalted statement issued by twenty-five Presbyterian Ministers in the State of Oregon.

The Chief Justice. Is it an appendix to your brief?

Mr. Guthrie. It is an appendix to my brief—at page 39 of Appendix I.

The Chief Justice. Are there several appendices?

Mr. Guthrie. There are two to my brief. Let me read from the protest of these Presbyterian Ministers:

> "Whereas, much of the propaganda in favor of this bill has been conducted in the name of Protestantism, we the undersigned ministers, members of the Presbyterian Church, believe that the proposed legislation is inimical to the highest human welfare for the following reasons:
>
> 1. It proposes to abolish one system of religious education and offers no substitute for it in any plan of religious instruction in connection with the public school system.
>
> 2. It is based on the philosophy of autocracy that the child belongs primarily to the state; it is an unjustifiable invasion of family authority and threatens ultimately the guarantees of our American liberty.
>
> 3. The proposed legislation in its conception, promotion and execution violates what we conceive to be the spirit of fraternity and brotherly love taught by our Master."

Finally, if your Honors please, I hope to be able to complete in the nine minutes left to me the subject of religious liberty. I may take two or three minutes more.

I pray that they will not be deducted from Judge Kavanaugh's time. I am trying to limit myself to the time allotted to me.

The Chief Justice. I do not think you are giving yourself enough time.

Mr. Guthrie. I think that five minutes (not taken out of Judge Kavanaugh's time) would enable me to complete this very hasty and imperfect presentation.

In discussing the question of religious liberty, which has been thrust into the case for the first time by the briefs filed on behalf of the Attorney General and the Governor of the State, I shall not fail, of course, to appreciate that this Court sits in impartial judgment upon all religions—upon all faiths and creeds.

The Attorney General's brief concludes with the concession, on page 72, to which I have already referred, that the reason why the people of the State of Oregon, under their initiative powers, have enacted this law is apparent; and he then proceeds to assert that this reason is that parents were sending their children of public school age to private schools—and I am now quoting his language—"in order that it may therein give sectarian religious instruction which is prohibited in the public schools."

And hence his idea and logic seem to be that liberty of religious teaching should not be upheld or permitted, because, as he continues—I am still quoting his language—"The right demanded by appellee is denied to all whose children attend the public schools."

This is followed by the statement, as if to emphasize and avoid any possible doubt as to his meaning and intent (p. 78), that "it does appear that the liberty claimed to be denied by such a law is liberty to give

sectarian religious instruction in connection with common school training; a thing which no one would have the temerity to demand as part of the course of instruction in the public schools."

In other words, the argument of the Attorney General is that, because religious instruction cannot be given in the public schools under the constitution and laws of Oregon, the State may forbid its being given anywhere else!

Could there be a plainer confession of the truth than we find in the Attorney General's candid brief, that the underlying motive and the immediate intent and purpose of this measure were anti-religious and to prevent religious instruction to children—as much so as any atheistic or sovietic measure ever adopted in Russia?

On the other hand, in the brief filed on behalf of the Governor of the State of Oregon, there is stated, as an argument in support of this law, that your Honors should appreciate that the vast majority of private schools of our country are now religious schools. And then the learned counsel of the Governor proceeds to assert (at p. 62) that if the character of the education of children is to be entirely dictated by their parents, they may be instructed in disloyalty, and taught "that the claims upon them of the religion to which they belong are superior to the claims of the United States."

And further these learned counsel assert practically that the children at religious schools "may be intentionally mistaught as to the true character of the Government and history of the United States." And yet it was solemnly asserted yesterday to your Honors that there was in truth no religious issue at all.

The Governor's counsel then proceed to proclaim in

their brief the extravagant and preposterous assertion that, if this law be not held constitutional by your Honors, "there is no legal principle on which any existing public school law in the United States can be upheld." I am quoting his language. And thereupon the Governor's counsel warn your Honors that if this question be held by your Honors to be within the field of federal protection of constitutional rights, such a decision "can only mean the spread of this bitter question all over the United States in the conflict over another proposed amendment to the Constitution." And what is "the bitter question" in counsel's mind who wrote and printed that statement if it be not the religious question?

In conclusion, the counsel for the Governor of the State of Oregon venture to state to your Honors in their brief (and I am quoting their very words) that "the Court might almost take judicial notice of the certainty of the introduction of such an amendment in case the Oregon law is declared unconstitutional."

I shall refrain from comment upon this threat, which I doubt that counsel will venture to repeat in the oral argument.

This case, if your Honors please, has lifted counsel, and I profoundly believe, the Court likewise, into the highest plane and realm of constitutional jurisprudence. In underlying and vitalizing principle, it involves infinitely more than all the wealth of the United States. It involves religious liberty, freedom of conscience, freedom of education, and the right of parents to bring up their children in the faith of their fathers.

As counsel at your bar, I appreciate how inadequately I have been able to present this great question on be-

half of the Sisters of the appellee Society. It is a noble professional privilege and a high professional honor to plead before you on behalf of the men and women who are devoting their lives all over the United States to the instruction of children and to their moral training and discipline in the doctrines of religion. It ought, indeed, to be a great and inspiring professional privilege.

I have not time to say a word, although I should like to do it, upon this cant of Americanization on the part of the promoters of this un-American measure. Imagine destroying the most valuable right that we Americans have inherited from the inspired generation that established this Government—imagine destroying the right to religious liberty and freedom of education in the name, in the cant, on the pretense of Americanization, with the wickedly false cry that they who seek to close all private and religious elementary schools are the only true Americans, when the whole history of our country cries out against the pretense in the face of the great roll of men and boys of the ancient faith of these holy Sisters, who volunteered in the last war, who served in it so gloriously, who showed the extent to which they were ready and willing to go, how they were ready to die for our country, whilst many of the people who are now agitating this movement and loudly canting of Americanization remained safely at home.

In his immortal Farewell Message, from which we have quoted in our brief, Washington told us for all time that the principal pillar of Government was religion, and admonished us to maintain it. And only a few days ago, his latest successor, President Coolidge, in lofty and noble words at his inaugural told us that the fundamental precept of liberty is toleration; that we cannot

permit any inquisition either within or without the law or apply any religious test to the holding of office; that the mind of America must be forever free;—that its Government will continue to stand desiring the advancement of religion, and that she cherishes no purpose save to merit the favor of Almighty God.

If I do not magnify, I profoundly believe that a decision upholding this law as valid would be the knell of freedom of conscience, of freedom of education, and of religious liberty in the United States.

But the Gospel of last Sunday tells us, sacredly and inspiringly (to paraphrase but one word):

Blessed are they who hear the word of the Constitution, and keep it.

On behalf of the private and religious schools throughout the country, I submit this great cause, destined in its decision to do incalculable good or harm in maintaining or subverting religious liberty and the freedom of education for centuries to come, with faith in the Constitution unfaltering and "triumphant o'er our fears."

ORAL ARGUMENT OF MR. KAVANAUGH ON BEHALF OF APPELLEE.

The Chief Justice. You may proceed, Mr. Kavanaugh.

Mr. Kavanaugh. I believe five minutes of my time are gone already.

The Chief Justice (interrupting). No; you have the full half hour.

Mr. Kavanaugh. Now, if your Honors please, I believe that the decision of this case depends upon the application of a very few principles. The propositions of law are so well settled by the former decisions of this Court that rediscussion of many of them would be futile.

So I shall endeavor for the most part merely to enumerate rather than discuss some of those vital and settled principles:

First of all, this appellee and all other corporations and individuals of the State of Oregon similarly situated are engaged in a useful and lawful calling. It is one of the noblest, of course, of all human callings. And the Constitution throws the mantle of its protection over that sort of activity.

When a law is passed unreasonably regulating or attempting to destroy a useful occupation, the inquiry at once occurs to the legal mind whether or not that is an improper exercise of legislative power, and whether or not the law is unconstitutional.

The rights here involved are vital and fundamental. They are inherent, and not derivative. These natural rights existed before constitutions were made; and they will exist after constitutions are dissolved; they are not created by constitutions, but certainly secured by them.

These schools, by the admissions in this record, have all been well conducted. They are at least equal to the best the public schools of the State of Oregon afford; there is no question about that.

There has been no complaint lodged against them. The proponents of this measure point to no evil that ought to be remedied; they suggest no abuse that ought to be remedied.

The measure does not purport to regulate. It was not designed to improve. Its single purpose was to suppress and destroy. And in that work of destruction, your Honors, it aims to destroy private schools of all classes, however efficient they may be in educational instruction and in cultural value. If a private school was far superior to the public school in a particular district, the children would be required nevertheless to attend the inferior school.

I cannot agree with the Attorney General when he says that all of the public schools of Oregon are of a superior quality and conform to a particular standard. In the nature of things, that cannot be, when the little schools in the wild prairie and in the dense timber districts of Oregon (for Oregon is a State of wide areas and small population) have great difficulty in maintaining their little schools. They are conducted, really, more in the nature of private local schools than public schools. The district trustees do the best they can. But they have not the funds available to employ competent teachers.

Mr. Justice McReynolds. Well, would that make any difference in your view?

Mr. Kavanaugh. It would not make any difference in my view. I am speaking now of the public schools.

Mr. Justice McReynolds. Well, but suppose they had

the best public schools that could be obtained, and had all the money they needed behind them?

Mr. Kavanaugh. It would not make any difference.

Mr. Justice McReynolds. I was trying to find out if it would make any difference.

Mr. Kavanaugh. I was saying that, even if private schools are superior in places—and they are superior in places and live by that superiority—they would have to go the way of all private schools. There is no distinction, no rule by which they can judge the kind of school that ought to be suppressed; but they suppress them all. Of course, I need not discuss that subject.

The law was never intended as a regulation. It was intended as a complete elimination of all private primary schools in the State of Oregon; and that would be its inevitable effect, and it is so conceded by the Attorney General here today.

Now, this kind of a measure is not a legitimate exercise of the police power of the State, broad and undefined as that power is.

Schools are particularly subject to reasonable regulation on account of the nature of their services.

But the power to regulate is not the power to destroy. There is no evil that could possibly creep into these schools that could not be remedied or corrected by regulation. It is admitted that there are no evils there now. But, even if there were, regulation could remedy them.

If regulation can control the evils that might creep into the employment agency business, a business that is subject to abuses, certainly regulation can correct any mistakes or imperfections that may creep into any system of schools. There is no perfect school system. Such a system cannot be created or established in this world.

The public schools have not reached a level of settled perfection. Nor have they yet approached, or so far approached perfection that it can properly be imposed, as the *sine qua non* standard of the education of the children of the country, that they must attend the public schools.

We invite reasonable regulation. We comply with all the regulations of the State. We are in favor of compulsory education. The State has a right to impose that.

Of course, education is first a parental duty. But the State has the right to force the delinquent parent to give his children an education, under penalty. And with that end in view, it establishes free schools, so that a parent shall have no excuse for not performing that essential parental duty.

The private school has a very venerable history, as has been already said. It has existed in this country since the beginning. And before the foundations of our Government were laid, it was engaged in the worthy work of imparting instruction to the men who breathed into this nation the breath of life.

And from that elder day until our own time, it has gone on in worthy and fruitful service to this day. When the public schools were later established, the two systems worked side by side in harmony and social peace; one profited by the example and the experimentation of the other. And some of the greatest steps that the public school has taken it owes to the private schools. On account of its nature, it was easier for the private school to practice experimentation. And many of the wisest regulations now adopted in public schools were first introduced and perfected in the private schools.

And so the great educators of this land, men who are

entitled to speak with authority on this subject, as well as the National Educational Association of this country itself, all condemn this kind of measure and say that the greatest misfortune that could happen to this country, that could happen to the public schools, even, would be the destruction of the private schools. From small beginnings they have grown until they have become, many of them, the greatest foundations in this land. They could not be destroyed without leaving a void that could not be filled.

If there be the power in the State to level the private primary school, that same power could later level the universities of this country, and require all children to attend State conducted schools. Once that power is conceded, who will shorten its arm? It is a dangerous power, a power the exercise of which was never contemplated by our constitutional guaranties.

Now, your Honors, I do not need to say to you that a private school that conforms to all the regulations of the State; that carries the course of studies provided by the State; whose students graduate from that school into the public high schools of the State; that performs all of that work, is also performing a valuable and beneficent function if it likewise teaches religion and moral training to young children. It is always a benefit if intellectual light be blended with the light of divine instruction; and one of the great open questions in this country today, one of the most serious problems, is that we are not able to give religious instruction and moral instruction to our children as they should receive it.

And again, I will have to disagree with the Attorney General, much as I hate to disagree with him, because he tries to be so fair in the performance of his public duty

here, when he says that the inspiration of these acts of the legislative assembly which are being enacted now, one of which was enacted last month in the State of Oregon, permitting children in the public schools two hours each week in school time to receive religious instruction, can be argued in favor of a law of this kind. But that is merely reflecting the view of the serious-minded men and women of this country that religious instruction and moral training must be given to the young, during the plastic years of life, or else we shall raise up a race of materialists who will have no reverence for any authority, either human or divine. And so we are returning to the spirit of the elder days as best we can, and providing by this measure to enable the students of the public schools to receive some of the religious training that they ought to receive.

That law is not a complement of this law which has been passed. It was passed under absolutely different conditions. The school measure which we are attacking here was passed in November, 1922. That law, after a change of sentiment in the State, was passed in February, 1925.

The court below entertained this suit, although the law would not go into effect for a long period of time in the future. This was an unusual act. Its period of suspension covered a long period of time, and it was unusual in that respect; as we search the decisions, we find no precedent where the period of suspension was so great as this.

But there was a particular reason for that. You see, your Honors, it would take the private schools a long course of time to adjust themselves to the new conditions; to liquidate their properties and to salvage what-

ever remained of their private primary schools, without too great a loss.

And again, the State required a considerable time to construct new buildings and make provisions to accommodate the great influx of children from a new source over and above the normal increase from year to year. And so at the time it was said that this period of suspension was inserted in the statute for those purposes.

But it produced a strange, and perhaps not an unexpected condition. As soon as the law was passed, private schools began immediately to decline; their patronage began to fall away; and they suffered actual, progressive and accelerating injury during all of that period. So great were these withdrawals, due entirely to this act and to the threats to enforce it, that they would have been obliged to close their schools before the period of suspension expired.

And with that condition existing; with that grim alternative presented to them, either to prepare to comply with the law regardless of its invalidity, or else go on and close their schools before the effective date of the statute arrived and suffer irreparable loss without any remedy in the courts of law, they appealed to equity for relief.

In an application for equitable relief in these circumstances, the thing the court is most interested in is the actual injury sustained. Time is relative as compared with injury. One is not obliged to wait until the lethal blow shall fall. They have a right to proceed as soon as the axe is laid at the foot of the tree. That may be soon or it may be late. But if the damage be actual and progressive and irreparable because of the threats to enforce an unconstitutional law, and there be no adequate remedy

at law, time, I say, becomes relative rather than injury; and the great question to observe is the question of injury. If we had permitted that period of suspension to expire, there would have been no schools to save.

In that desperate situation presented to the court below, and by them fully appreciated, as not only alleged and admitted on the record but the natural thing to occur, they granted us an interlocutory injunction; and that interlocutory injunction was the only arresting influence that has come in this decline of the private schools of the State of Oregon. After that injunction, the withdrawals were decreased, and some students returned. But that was the direct influence in favor of the private schools and the attendance at the private schools.

Now, your Honors, there was no present emergency for this legislation. I concede that, in a great emergency, the State has great powers. But there is not a thing said, not an argument advanced, which shows that there was any emergency at all. And there is no danger, either actual or potential, in the conduct of these private schools. The percentage of population, of course, of school age attending these schools is very small—a small percentage of the children of the State.

And Oregon, too—some reference was made to that in the briefs—is a State that is populated chiefly by native-born. The foreign-born population is very small, and is negligible in the whole State.

Mr. Justice McReynolds. I will ask again, if you think that affects this question?

Mr. Kavanaugh. Not at all, except that it was referred to in the briefs.

Mr. Justice McReynolds. As I understand you, you argue that this thing cannot be done under any conditions?

Mr. Kavanaugh. Not under any conditions.

There is another reason why this law is unconstitutional and void. It violates the contract between the State of Oregon and the appellee. The appellee was organized and incorporated under the general laws of the State of Oregon, for the express purpose of conducting schools, and of purchasing and acquiring property for school purposes; and there was in the State of Oregon then no reserved power to alter or amend or forfeit the charter. It is not in the same situation as the *Berea College* case; because the court of last resort in Oregon has held that the State may not, by subsequent legislation, alter or impair the corporate rights invested by the corporate charter.

Of course, the police powers of the State cannot be bargained away; and they have the right to regulate. But, as has been shown to you, this is not an act of regulation. It is an act of destruction. It destroys completely the very beneficial interest that was granted by the franchise of the State of Oregon to this appellee.

And our Supreme Court has held twice, not only that the rule in the *Dartmouth College* case is in force in that State strictly, but that interfering even with the corporate name of a corporation is an impairment of the obligation of the contract.

The State of Kentucky had held, prior to the *Berea College* case, that there was a reserved power in that State whereby subsequent legislation could alter or change the corporate charter. And that is why I understand this Court held in that case as it did.

But the Court here, as in all Federal Courts, must follow the decisions of the State courts; and the rule in Oregon is in accordance with the rule laid down in the *Dart-*

mouth College case, that a regulation which unreasonably interferes with the beneficial interest carried by the corporate franchise is in violation of the contract clause of both the Federal Constitution and the Constitution of Oregon.

In conclusion, your Honors, we submit that this appellee is invested with the inherent right to conduct its private schools; that the State may regulate to any reasonable degree, with any sort of regulation that bears a reasonable relation to the public health, the public morals, or the public welfare. However, this is not an act of regulation, but an act of destruction; and it violates the inherent and fundamental rights of this appellee; it takes its property without due process of law, and it violates the contract between it and the State of Oregon.

And so we submit that the decree of the court below should be sustained. We appeal with confidence to the Constitution. It was the first hope of the Fathers. It is the last refuge of the persecuted and the oppressed.

S

October Term, 1924

No. 604

WALTER M. PIERCE, as Governor of the State of Oregon, [illegible] as Attorney General of the State of Oregon, and FRANK MYERS, as District Attorney for Multnomah County, State of Oregon, *Appellants*,

vs.

HILL MILITARY ACADEMY, a corporation, *Appellee*.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON.

BRIEF OF APPELLEE, HILL MILITARY ACADEMY

JOHN C. VEATCH,
Attorney for Appellee.

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Supreme Court of the United States

OCTOBER TERM, 1924

No. 584

WALTER M. PIERCE, as Governor of the State of Oregon; ISAAC H. VAN WINKLE, as Attorney General of the State of Oregon, and STANLEY MYERS, as District Attorney for Multnomah County, State of Oregon, *Appellants,*

vs.

HILL MILITARY ACADEMY, a corporation, *Appellee.*

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON.

BRIEF OF APPELLEE, HILL MILITARY ACADEMY

STATEMENT

At the general election held in the state of Oregon, in November, 1922, the people passed an act amending section 5259 Oregon Laws, which amendment provides that every parent, guardian or other person having control, charge or custody of a child under the age of sixteen years and over the age of eight years who shall fail

to send such child to a public school for the period of time a public school shall be in session in the district where such child resides, shall be guilty of a misdemeanor, and excepts from the provision of the act (a) children physically unable to attend school; (b) children who have completed the eighth grade; (c) children who live a certain distance from school; and (d) children who are being taught by a parent or private teacher, under certain conditions. The act further provides that it shall be and remain in force from and after the first day of September, 1926.

This appellee conducts a private school for boys at the City of Portland, Multnomah County, Oregon, a large per cent of the students attending its school being within the ages and in the grades prescribed in the act. This suit was instituted against the Governor and Attorney General of the state of Oregon and the District Attorney of Multnomah County, Oregon, as the law officers of the state, to restrain them from declaring the act to be a valid law of the state and from threatening to enforce it when it becomes effective by its terms. The District Court for the District of Oregon, granted the relief prayed for in the complaint, from which decree defendants appeal.

The bill of complaint in this case alleges that the act in question is unconstitutional and void in several particulars, but in presenting the case to the lower court, this appellee relied wholly upon the proposition that the act

is in violation of section 1 of the Fourteenth Amendment to the Constitution of the United States, in that it deprives this appellee of its property without due process of law. We rely upon that ground in this court.

ARGUMENT

The Governor and Attorney General have filed briefs herein contending that the act is a compulsory education measure and as such is a valid exercise of the police power of the state. No one will deny that the state has the power to promote education among its people and that laws designed and intended for that purpose are a valid exercise of the police power. The state has the power to compel children to attend school, and to regulate and control schools so as to insure certain standards in education. Nearly all states have adopted such laws and the validity of these laws has been repeatedly sustained by the courts. The Governor and Attorney General, however, seem to take the position that there is no limit to the exercise of this power and that a mere declaration on the part of the legislative body that the act is a compulsory education measure takes it out of the constitutional restrictions regardless of the conditions to which it may apply and regardless of individual rights which it may violate.

No legislative act of the state, no matter how little it may interfere with the liberty or property of the individual, is a valid exercise of the police power of the

state unless it is intended to correct an existing evil or promote some object it is competent for the state to promote, for without that restriction, life, liberty and property would ever be subject to arbitrary power.

The right of the individual to be secure in his life, liberty and property, unless the same be taken according to the established customs, or the law of the land, is older than written constitutions. When King John was compelled to confirm this principle in the Magna Charta, he was granting nothing new, but merely confirming that which had ever been regarded as a right of free men. It was afterwards confirmed in Parliament by Henry III, and in the reign of Edward I, declared to be the common law of the land. We find it in the Bill of Rights presented to Charles I, and in the bill presented by the Lords and Commons to the Prince and Princess of Orange; it is in the Body of Liberties of the Massachusetts Colony of 1641, and has been reaffirmed in the Fifth and Fourteenth Amendments to the Constitution of the United States.

At no time in history has it ever been regarded that restrictions could be placed upon these rights unless such restrictions were necessary to promote the public welfare.

> Thus the statute of King Edward IV, which forbade the fine gentlemen of those times (under the degree of a lord) to wear pikes upon their shoes

or boots of more than two inches in length, was a law that savored of oppression, because, however ridiculous the fashions then in use might appear, the restraining it by pecuniary penalties could serve no purpose of common utility.

Sir William Blackstone, Book I, Chapter I.

Our courts have ever held that any restrictions upon the rights of the individual are arbitrary and oppressive unless such restrictions are intended to promote the public welfare and have a reasonable relation to that purpose.

It is also well established that, when a State, exerting its recognized authority undertakes to suppress what it is free to regard as a public evil, it may adopt such measures having a reasonable relation to that end as it may deem necessary in order to make its action effective.

Purity Extract Co. v. Lynch, 226 U. S. 192.

If the law in controversy has a reasonable relation to the protection of the public health, safety or welfare, it is not to be set aside because the judiciary may be of the opinion that the act will fail in its purpose.

McLean v. Arkansas, 211 U. S. 539.

The principle involved in these decisions is that where the legislative action is arbitrary and has no reasonable relation to a purpose which it is competent for the Government to effect, the legislature transcends the limits of its power in interfering with the liberty of contract; but where there is a reasonable relation to an object within the governmental authority, the exercise of legislative discretion is not subject to judicial review.

C. B. & Q. R. R. Co. v. McGuire, 219 U. S. 549.

* * * if it appear that the regulation under criticism is not in any way designed to promote the health, comfort, safety or welfare of the community, or that the means employed have no real or substantial relation to the avowed or ostensible purpose, or that there is wanton or arbitrary interference with private rights, the question arises whether the law-making body has exceeded the legitimate boundary of police power.

Atlantic Coast Line v. Goldboro, 232 U. S. 559.

* * * that among the powers of the State not surrendered—which power therefore remains with the State—is the power to so regulate the relative rights and duties of all within its jurisdiction so as to guard the public morals, the public safety and the public health, as well as to promote the public convenience and the common good; and that it is with the State to devise the means to be employed to

such ends, taking care always that the means devised do not go beyond the necessities of the case, have some real or substantial relation to the objects to be accomplished and are not inconsistent with its own constitution or the Constitution of the United States.

House v. Mayes, 219 U. S. 270.

In determining the validity of the ordinance in question it may be taken as firmly established in the jurisprudence of this court that the States possess, because they have never surrendered, the power—and therefore municipal bodies, under legislative sanction, may exercise the power—to prescribe such regulations as may be reasonable, necessary and appropriate, for the protection of the public health and comfort; * * * taking care always that no regulation, although adopted for those ends shall violate rights secured by the fundamental law nor interfere with the enjoyment of individual rights beyond the necessities of the case. Equally well settled is the principle that if a regulation, enacted by competent public authority avowedly for the protection of the public health, has a real substantial relation to that object, the courts will not strike it down upon grounds merely of public policy or expediencey.

Reduction Company v. Sanitary Works, 199 U. S. 306.

> Of course, in the exercise of the right of public interest as against such corporations, the demand must be reasonable and must clearly appear to be for the public welfare.
>
> C. B. & Q. R. R. Co. vs. Drainage Commissioners, 200 U. S. 561.

It then becomes material to determine the purpose for which this act was passed, the relationship of the act to the purpose and the reasonableness of the act in the light of the conditions to which it applies.

The Purpose of the Act.

It will be noted that the act, when presented to the people at the general election in November, 1922, was entitled, "A Bill for an Act to Propose by Initiative Petition to Amend Section 5259, Oregon Laws—Compulsory Education." (Trans., page 4.)

Section 5259, Oregon Laws, provides as follows:

> *Children Between the Ages of Nine and Fifteen Years.* Every parent, guardian or other person in the state of Oregon having control or charge of any child, or children between and including the ages of nine and fifteen years of age, shall be required to send such child, or children, to the public schools for the term or period of not less or more than the number of months of public school held annually in

the district in which such parent, guardian or other person in parental relation may reside; provided, that in the following cases, children shall not be required to attend public schools:

(a) Children Being Taught in Private School. Any child, or children, who is, or are, being taught for a like period of time in a private or parochial school, such branches as are usually taught in the first eight years in the public schools, or has or have, already acquired the ordinary branches of learning taught in such schools, the fact of which acquisition of such ordinary branches of learning by such child, or children, shall be determined by the school board in charge of the public school in such district;

(b) Children Physically Unable. Any child, or children, who is, or are, physically unable to attend school. In such cases the truant officer shall require a written statement of a competent physician certifying that such child, or children, is, or are, physically unable to attend school;

(c) Distance from School. Children between the ages of nine and ten years of age whose parents live more than one and one-half miles, and children over ten years of age whose parents live more than three miles, by the nearest traveled road, from some public school; provided, that if transportation is

furnished pupils in said district this exemption shall not apply;

(d) Private Instruction. Any child, or children, who is, or are, being taught for a like period of time by the parent or private teacher such subjects as are usually taught in the first eight years in the public school, but before such child, or children, can be taught by a parent or private teacher, such parent or private teacher must receive written permission from the county superintendent, who is hereby authorized to grant such permission only in case of necessity and such permission shall not extend longer than the end of the current school year. Such child, or children, must report to the county school superintendent or some person designated by him at least once every three months and take an examination in the work covered. If after such examination the county superintendent shall determine that such child, or children is, or are, not being properly taught, then the county superintendent shall order the parent, guardian or other person in parental relation to send such child, or children to school the remainder of the school year. Failure on the part of the parent, guardian or other person in parental relation to comply with the order of the county superintendent shall render such person liable to the penalty provided for in this act.

Sec. 5259, Oregon Laws.

The amendment to this act (Trans., pp. 4-5) changes the ages for compulsory attendance from nine and fifteen years to eight and sixteen years and omits paragraph "(a)", relating to private schools. The intent and purpose of the present law is to compel children to attend school for a certain length of time or until they have reached a certain standard of education. The amendment adds nothing to the law now in force in so far as the standard of education is concerned, but it prevents children within the prescribed ages and within the elementary grades from attending private schools.

The Governor and Attorney General, while admitting that the purpose of the act is to compel attendance at public schools and thus prevent children from attending private schools, claim that since the act is labeled a compulsory education measure, it should be considered on that ground alone. When there is doubt as to the interpretation of a statute, the legislative intent must govern, but the legislature cannot change the plain meaning of a statute by giving it a title different from its intent, nor could the legislature by declaring in so many words that the act is intended to promote education by compelling children to attend the public schools take the act from the limitations placed upon the police power of the State.

That the legislature is not the final judge of the limitations of the police power, and that such enact-

ments are subject to the scrutiny of the courts and will be set aside when found to be unwarranted and arbitrary interferences with rights protected by the Constitution in carrying on a lawful business or making contracts for the use and enjoyment of property is well settled by former decisions of this court.

Silz v. Hesterberg, 211 U. S. 31.

It must be conceded that there is a limit to the valid exercise of the police power of the State. There is no dispute concerning this general proposition. Otherwise the Fourteenth Amendment would have no efficacy and the legislatures of the states would have unbounded power, and it would be enough to say that any piece of legislation was enacted to conserve the morals, the health or the safety of the people; such legislation would be valid, no matter how absolutely without foundation the claim might be. The claim of the police power would be a mere pretext—become another and delusive name for the supreme sovereignty of the State to be exercised free from constitutional restraint. This is not contended for. In every case that comes before this court, therefore, where legislation of this character is concerned and where the protection of the Federal Constitution is sought, the question necessarily arises: Is this a fair and reasonable and appropriate exercise of the police power of the State, or

is it an unreasonable and unnecessary and arbitrary interference with the rights of the individual in his personal liberty or to enter into those contracts in relation to labor which may seem to him appropriate or necessary for the support of himself and his family. * * * The mere assertion that the subject relates though but in a remote degree to the public health does not necessarily render the enactment valid. The act must have a more direct relation, as a means to an end, and the end itself must be appropriate and legitimate, before an act can be held to be valid which interferes with the general right of an individual to be free in his person and in his power to contract in relation to his own labor.

Lochner v. New York, 198 U. S. 45.

The Attorney General contends (Brief, page 35) that the act does not prevent children within the prescribed ages from attending private schools as they could attend such schools at other times than the regular school hours. What might be the effect of the act, or what could be the effect of the act, is not a proper question for the court's consideration, but what, in the light of all reason, will be the effect of the act is the basis for determining its validity.

The question whether a state law deprives a party of rights secured by the Federal Constitution depends not upon how it is characterized, but upon its practical operation and effect.

Mountain Timber Co. v. Washington, 243 U. S. 219.

> In whatever language a statute may be framed, its purpose must be determined from its natural and reasonable effect.
>
> Henderson v. Mayor of New York, 92 U. S. 259.

No interpretation can be placed upon this act other than that it is intended to prevent children between the ages of eight and sixteen years and in the elementary grades from attending private schools. That is its plain meaning and intent and that is the interpretation placed upon it by appellants in this case. But the Attorney General claims that, even if this is the intent and purpose of the act, it will not prohibit the business of conducting private schools because such schools could still be conducted for children under and over the ages specified in the act. The validity of the act is not determined by the amount of business it destroys. If it is within the power of the State to take away the business of the private school in the elementary grades, it is equally within the power of the State to take away their business in all grades.

In the case of *Adams v. Tanner*, 244 U. S. 590, the State of Washington passed an act making it unlawful for any employment agent, his representative or other person to demand or receive a fee from any person seeking employment for furnishing him or her with employment or information leading thereto. It was

contended in that case that the act was not intended to and did not prohibit the business of conducting an employment agency since such agencies could collect their fees from those seeking laborers instead of from those seeking employment. The Court held that, while the fees might be collected from the employers, the act, in fact, prohibited the business because it could not exist with the restrictions placed upon it.

> To say it is not prohibited because fees may be collected for something done in behalf of other principals is not good reasoning. The statute is one of prohibition, not regulation. "You take my house when you take the prop that doth sustain my house; you take my life when you do take the means whereby I live."
>
> Adams v. Tanner, 244 U. S. 590.

This act is not designed and intended to promote compulsory education. It adds nothing to the standard of education, it does not broaden the educational field; the changing of the ages for compulsory school attendance is in no way affected by the clause relating to private schools. All compulsory educational laws of the various states are on the same general plan as the Oregon law; they require that children within certain ages shall attend public school except where they are receiving the same standard of education from other sources. The whole intent and purpose of such laws is that chil-

dren shall receive a certain standard of training, not that they shall be educated in public schools or in any particular school or manner.

> The great object of these provisions of the statute has been that all children shall be educated, not that they shall be educated in any particular way. To this end public schools are established, so that all children may be sent to them unless other sufficient means of education are provided for them.
>
> Commonwealth v. Roberts, 159 Mass. 372.

The Relation of the Statute to a Competent Purpose.

That the police power of the State is very broad has never been denied. The State may exercise this power to promote and protect the health, morals, safety, convenience, comfort and general welfare of its people; to protect its people from fraud, oppression and vice; to promote the prosperity, good order and tranquility of its citizens. But there must be a real connection between the statute and a competent purpose; it must be a means to an end, and the means must be reasonably adapted to accomplish the purpose. (*Purity Extract Co. v. Lynch*, 226 U. S. 192; *McLean v. Arkansas*, 211 U. S. 539; *Atlantic Coast Line v. Goldboro*, 232 U. S. 559; *Reduction Co. v. Sanitary Works*, 199 U. S. 306; *Lochner v. New York*, 198 U. S. 45; *Lawton v. Steele*, 152 U. S. 133; *Helena v. Dwyer*, 64 Ark. 424; *Health Depart-*

ment v. Trinity Church, 145 N. Y. 32; *State Board etc., v. Greenville,* 86 Ohio St. 1; *Laurel Hill Cemetery v. San Francisco,* 152 Cal. 464; *Smiley v. McDonald,* 42 Neb. 5; *Aetna Fire Ins. Co. v. Jones,* 78 S. C. 445; *Wolf v. Smith,* 149 Ala. 457; *Wilson v. Cook,* 54 Colo. 320; *Young v. Lemineux,* 79 Conn. 434; *People v. Wilson,* 249 Ill. 195; *Republic Iron & Steel Co. v. State,* 160 Ind. 379; *Hubbell v. Higgins,* 148 Ia. 36; *Durgin v. Minot,* 203 Mass. 26; *State v. Wagner,* 77 Minn. 483; *Carthage v. Frederich,* 122 N. Y. 268; *People v. Hawkins,* 157 N. Y. 1; *State v. Williams,* 146 N. C. 618; *State v. Boone,* 84 Ohio St. 346; *Black v. Swartz,* 27 Utah 387; *State v. Redmon,* 134 Wis. 89; *Meyer v. Nebraska,* 262 U. S. 290.)

> To justify the State in thus interposing its authority in behalf of the public, it must appear, first, that the interests of the public generally, as distinguished from those of a particular class, require such interference; and, second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals.
>
> Lawton v. Steele, 152 U. S. 133.

In statutes involving the exercise of the police power, it can usually be determined from the statute itself what evil is intended to be corrected or what good is to be accomplished by the legislation. The court can

usually say from the terms of the act, that it applies to the health, the morals, the safety or the general welfare of the people. And the courts can also usually determine, either from the terms of the statute, or from general knowledge of the matters to which it applies, or from facts before the court in the particular case, whether or not the statute has a reasonable relation to the purpose it is intended to accomplish. However, in this case, it neither appears from the terms of the statute, from matters of common knowledge nor from any fact in the record, what evil the legislation is intended to correct or what good it is intended to promote. It is significant that appellants, after months of contemplation, are unable to designate the particular purpose of the statute. A public danger cannot be very great or a public necessity cannot be very pressing if learned counsel, after a long and painstaking effort, cannot locate it. Appellants, however, have made several suggestions as to what the evil might be and as to what good might be accomplished by preventing children from attending private schools, but no where in the briefs of either the Attorney General or the Governor does there appear a single fact, a single citation of authority, or a word about local conditions in the State which would warrant the Court in concluding that the prohibition of this business would in any way protect the people from an evil or promote the general welfare of the citizens of Oregon.

We will consider this act from the standpoint of the objects which the Governor and the Attorney General

suggest it might have been intended to promote for the purpose of determining whether or not it can reasonably be said that the legislation will accomplish any of these purposes. The only purposes that we have been able to glean from the briefs of these state officers are: (1) That the education and assimilation of the foreign-born can best be accomplished in the public schools; (2) that the increase in crime among children might be due to private schools; (3) that religious prejudice is increased by the two school systems; (4) that private schools might be conducted by bolshevists, communists and syndicalists; (5) that the instruction in private schools is inferior to the instruction in public schools and (6) that private schools might develop until they destroy the public school system.

The Assimilation of the Foreign-Born.

In this connection, it should be remembered that the vast majority of children not now attending the Public Schools of Oregon who will be compelled to do so by the new statute, are either themselves immigrants ~~are~~ or the children of immigrants.

Surely a State can require of all immigrants admitted to all the advantages and opportunities of life in the United States, that their children may be taught by the State the English language, and the character of American institutions and government.

Governor's Brief, page 40.

The school reports for the state of Oregon do not segregate children according to parentage, so that it is necessary to take the year 1920 as a basis of comparison in order to make use of the census figures. There is a slight variation between the census figures and the report of the Superintendent of Public Instruction of the State of Oregon, for the year 1920, but the variation is not material. The figures from these two sources show that in 1920, the total enrollment in all schools of the state was 156,889. Of this number, 148,412 were in the public schools and 8,477 in private schools. There were 3,170 foreign-born children and 30,800 children of foreign-born or mixed parentage, between the ages of 5 and 20 years, attending school. It thus appears that 21.6% of the school children would be affected by the policy of assimilation. If all the children in private schools were immigrants or the children of immigrants, they would constitute but 25.4% of such children in the schools of the state, and but .05.4% of the total number of children attending school.

But the children in the private schools of Oregon are neither immigrants nor the children of immigrants. It is a matter of common knowledge that private schools are financed wholly or partly by tuition received from the students. The tuition charges are usually quite substantial; the fee charged by the appellee in this case is $800.00 per annum for each student (Trans., page 3). Immigrants, especially those who are in the greatest

need of assimilation, cannot afford to send their children to private schools.

But assuming that foreign-born children and the children of foreign-born parents were attending private schools in the same proportion that such children bear to the whole number of school children of the state, this legislation could reach but .05.3% of the children in need of assimilation.

Is there any good reason to suppose that such children can not be assimilated in the private schools? Are they instructed any differently; do they have less opportunity to associate with native-born children than they would have in the public schools? The laws of Oregon now provide that children in private schools shall be taught for a like period of time "such branches as are usually taught in the first eight years in the public schools." (Sec. 5259, Oregon Laws); that they shall be given instruction in the Constitution of the United States:

> In all public and private schools located within the state of Oregon, commencing with the school year next ensuing after the passage of this act, there shall be given regular courses of instruction in the constitution of the United States.
>
> Chapter 7, General Laws of Oregon, 1923.

And the laws also provide that all teachers in private schools shall take an oath of allegiance.

Section 1. Any person entering into a contract to teach in the public schools of the state shall, as a part of the contract, subscribe to the following oath or affirmation:

"I solemnly swear, or affirm, that I will support the constitution of the State of Oregon * * * and the laws enacted thereunder, and that I will teach, by precept and example, respect for the flags of the United States and of the State of Oregon; * * * reverence for law and order and the undivided allegiance to the government of our country, the United States of America."

The said oath or affirmation, duly signed, shall be filed in the office of the examiner issuing the certificate and a copy shall be given to the applicant making the oath and affirmation.

Section 2. Every teacher now or hereafter employed in a private or parochial school or in any academy, college, university or other institution of learning in this state shall, before entering upon the discharge of his or her duties, take the same oath or affirmation of allegiance as that prescribed for public school teachers in Section 1. Such oath or affirmation shall be taken and subscribed to before some officer authorized by the state to administer oaths, and a copy of the oath or affirmation shall be filed with the officer or board in charge of such

private or parochial school or other institution of learning.

The above requirements shall not apply to exchange professors or teachers whose term of service is temporary, and who do not become permanent residents of the United States.

Chapter 115, General Laws of Oregon, 1921.

And further provides that instruction shall be given in the English language:

It shall be unlawful for any board of school directors, regents, or trustees, or for any teacher or other person teaching the public or private schools in the State of Oregon, to cause to be taught or to teach any subject or subjects, other than foreign languages, in the public or private schools in the State of Oregon in any language except English

* * *

Section 2223-3, Oregon Laws.

The State of Oregon is not confronted with any serious problem of assimilation. The 1920 census shows that 85.1% of our population is native-born white. Of a total foreign-born population of 102,151, the majority, 70,901, come from the countries of northern Europe. Canada and the British Isles furnish 30,725 of our immigrants, and Germany and the Scandinavian countries furnish the next largest number. These immigrants have always been considered as highly desirable and are

easily assimilated with our population. The census further reveals that the foreign-born population is not centered in any locality but is scattered throughout the state. They are not congregating in centers and establishing private schools for the purpose of preserving the ideals of their native lands.

The lack of assimilation of the alien is not an existing evil in this state, but if it were, are there any facts or circumstances upon which the Court could conclude that this legislation is the means for accomplishing that end or has a reasonable relation to the purpose?

Increase in Crime.

> The voters of Oregon who adopted the new School Law for their State had the right to base their action on the belief that the fact that the great increase in juvenile crime in the United States followed so closely after the great increase in the number of children in the United States who are not attending public schools, was more than a coincidence.

Governor's Brief, pp. 39-40.

Statistics on juvenile crime are available to every one, but no where does it appear that there is any connection between this condition and private schools. But there is this to be said for counsel's suggestion—it is at least novel. The connection is certainly not apparent enough to enable the court to say that the elimination of

the elementary grades in private schools is a means to an end in so far as correcting juvenile crime is concerned.

Increase in Religious Prejudice.

> The voters in Oregon might also base their action in adopting this law upon the alarm which they felt at the rising tide of religious suspicions in this country, and upon their belief that the basic cause of such religious feelings was the separation of children along religious lines during the most susceptible years of their lives, with the inevitable awakening of a consciousness of separation, and a distrust and suspicion of those from whom they were so carefully guarded.
>
> Governor's Brief, page 40.

Written history covers a period of many centuries and across the pages of that record runs the story of religious prejudice with its resultant wars and oppression. If there is one lesson that the human race has learned from its past experience it is that religion cannot be forced upon any people or taken away from any people by law. Man's right to hold to any religious belief and to pass that belief on to his posterity is as inherent as his right to live. Counsel speak of the "rising tide of religious suspicion," but there has never been a period in history when that tide was so low. There is more universal toleration of religious beliefs in the world today than at any time in the past. But if that

tide were rising, could it with reason be said that it is the result of private schools? The census of 1920 shows that there were 23,777,705 school children in the United States. The reports of the Bureau of Education of the Department of the Interior of the United States for 1920, show a total enrollment in all private schools of 184,153. Of this number, 130,019 were in private schools conducted by religious denominations. What effect on religious prejudice can one hundred and thirty thousand have on twenty-three million? In Oregon, but 3.4% of the school children of the state at the present time are in private schools. The reports of the Superintendent of Public Instruction do not segregate these schools according to religious denominations, but if all the private schools of Oregon were denominational schools, teaching one particular religious belief, the percentage is too insignificant to have any effect upon the whole. Private schools existed long before the public schools, they were formerly the only means offered for educating the children of the land. If they were the means of fostering religious prejudice has not this evil corrected itself by the growth of the public schools? Is it competent for the State to legislate to correct an evil that has spent its force?

That Private Schools Will Be Conducted by Those Who Are Disloyal.

If the Oregon School Law is held to be unconstitutional it is not only a possibility but almost a

certainty that within a few years the great centers of population in our country will be dotted with elementary schools which instead of being red on the outside will be red on the inside.

Can it be contended that there is no way in which a state can prevent the entire education of a considerable portion of its future citizens being controlled and conducted by bolshevists, syndicalists and communists?

Governor's Brief, page 46.

The police power may be used to correct an existing evil and there may be cases where it might be used to prevent an evil that is certain to come, but we know of no cases upholding the use of the police power to prevent and purely theoretical and speculative injury. We can only judge the future by the past and the past history of private schools shows no such tendency as counsel predict. But the danger of such schools in the state of Oregon is very remote:

(c) Any person who, by word of mouth or writing, advocates, affirmatively suggests or teaches the duty, necessity, propriety or expediency of crime, criminal syndicalism, or sabbotage, or who shall advocate, affirmatively suggest or teach the duty, necessity, propriety or expediency of doing any act of violence, the destruction of or damage to any property, the bodily injury to any person or

persons, or the commission of any crime or unlawful act as the means of accomplishing or effecting any industrial or political ends, change or revolution, or for profit, or who prints, publishes, edits, issues or knowingly circulates, sells, distributes or publicly displays any books, pamphlets, paper, handbills, poster, document or written or printed matter in any form whatsoever, containing matter advocating, advising, affirmatively suggesting or teaching crime, criminal syndicalism, sabbotage, the doing of any act of physical violence, the destruction or damage to any property, the injury to any person, or the commission of any crime or unlawful act as the means of accomplishing, effecting or bringing about any industrial or political ends, or change, or as a means of accomplishing, effecting or bringing about any industrial or political revolution, or for profit, or who shall openly, or at all attempt to justify by word of mouth or writing, the commission or the attempt to commit sabbotage, any act of physical violence, the destruction of or damage to any property, the injury of any person or the commission of any crime or unlawful act, with the attempt to exemplify, spread, or teach, or affirmatively suggest criminal syndicalism, or organizes, or helps to organize or becomes a member of, or voluntarily assembles with any society or assemblage of person which teaches, advocates or affirmatively suggests the doctrine or criminal

syndicalism, sabbotage, or the necessity, propriety or expediency of doing any act of physical violence or the commission of any crime or unlawful act as the means of accomplishing or effecting any industrial or political ends, change or revolution or for profit, is guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state penitentiary for a term of not less than one year nor more than ten years, or by a fine of not more than $1,000, or by both such imprisonment and fine.

Section 2025-1 subd (c), Oregon Laws.

That Instruction in Private Schools Is Inferior.

In this case it is to be presumed that the legislature and the people of the state investigated the question of the necessity of such legislation and found and determined, as a question of fact, that the instruction given to children of the ages affected by the amendment in the public schools of the state was better and more complete than that provided by private institutions; * * *

Brief of Attorney General, page 47.

The law of the state now provides that private schools shall teach "such branches as are usually taught in the first eight years in the public schools." (Sec. 5239, Oregon Laws.) Section 4915, Oregon Laws pro-

vides for a Superintendent of Public Instruction; section 4918, defines his duties:

> 4. Secure Information. He shall visit in person when practicable all of the chartered educational institutions of the state, and shall secure such statistical information relative to the number of students, teachers, value of property, libraries, salaries, and courses of study, as he may deem advisable for the advancement of education and for the information of the legislature;
>
> Sec. 4918, subd. 4, Oregon Laws.

Section 4919, provides that he shall make reports to the legislature, such reports to contain, among other things, "any and all information that in his judgment may be useful to the public and for the advancement of the educational interests of the state." No where does it appear in the reports of the Superintendent of Public Instruction that the educational work of the private schools is insufficient. The presumption is that the Superintendent has made the investigations and correctly reported the conditions. If the legislative body found and determined "as a question of fact" that the instruction in private schools was so inferior as to warrant legislation of this nature, surely some of the facts upon which the determination was made would be available to the Attorney General to place before this Court.

Private schools are charging for a service which the

State offers free. If they maintain their patronage they must not only offer as much as is offered by the public schools but must go further and offer something in addition to the usual public school course. Self preservation alone would maintain the educational standards of private schools.

That Private Schools Might Destroy the Public School System.

> If a few such institutions can lawfully be maintained, the number which may ultimately be so maintained can not consistently be limited, and if this court should hold that the state does not have the right to require all children within its borders to be educated in its public schools, such institutions may, without constitutional restriction, develop a system of educational training which will result in doing away with public schools.
>
> Brief of Attorney General, page 37.

The history of education in this country is too well known to be reviewed here. The reports of the Bureau of Education of the Department of the Interior show an ever greater percentage of children attending the public schools. While the reports will show an increase in the number of private schools, the percentage of increase in these schools is less than in the public schools. The increase in private schools is confined to sectarian schools

which do not depend entirely upon tuition for support and can longer stand the competition of the public school system. Non-sectarian schools which depend entirely upon tuition have greatly decreased in number. This has been the tendency for many years and the conditions in Oregon are no different than the conditions throughout the country. The reports of the Superintendent of Public Instruction for the State of Oregon, show that in 1910, the enrollment in the public schools in this state was 118,412 and in the private schools 6,233; in 1924, the numbers were 175,510 in the public schools and 5,994 in private schools.

That the educational system of Oregon is not being hampered by the private schools is shown by the last report of the Superintendent of Public Instruction showing that Oregon ranks third among the state of the Union in illiteracy; but two states in the Union have a higher average daily attendance in the schools, and but three states in the Union have a higher percentage of high school attendance.

The Power of the State.

The power of the State to protect the health, morals, safety, and promote the prosperity, convenience and general welfare of its people is just as much a natural and inherent power of government as is the right of life, liberty and property a natural and inherent right of the individual. Neither the power of the State nor the right

of the individual is supreme, for the supremacy of the power of the State would lead to oppression, and the supremacy of the right of the individual would lead to chaos. While no rule of law defines the limits of the State's power, the principle, based upon the universal decisions of the courts, is that the power shall not interfere with the rights of the individual, unless such interference is necessary to promote the public welfare and the restrictions placed upon the individual's rights have a real, substantial, and direct relation to the object to be accomplished. The restrictions must be the means to accomplish that which is necessary for the welfare of the public.

> The liberty of the individual to do as he pleases, even in innocent matters, is not absolute. It must frequently yield to the common good, and the line beyond which the power of interference may not be passed is neither definite nor unalterable but may be made to move, within limits not well defined, with changing need and circumstances. Any attempt to fix a rigid boundry would be unwise as well as futile. But, nevertheless, there are limits to the power, and when these have been passed, it becomes the plain duty of the courts, in the proper exercise of their authority to so declare. To sustain the individual freedom of action contemplated by the Constitution, is not to strike down the common good but to exalt it; for surely the good of society as a whole cannot be better served than by the

preservation against arbitrary restraint of the liberties of its constituted members.

Adkins v. Childrens Hospital, 261 U. S. 525.

The legislative power of a state can only be exerted in sub-ordination to the fundamental principles of right and justice which the guaranty of due process in the Fourteenth Amendment is intended to preserve, and that a purely arbitrary or capricious exercise of that power whereby a wrongful and highly injurious invasion of property rights, as here, is practically sanctioned and the owner stripped of all real remedy, is wholly at variance with those principles.

Truax v. Corrigan, 257 U. S. 312.

When we consider the nature and theories of our institutions and government, the principles upon which they are supposed to rest, and review the history of their development, we are constrained to conclude that they do not mean to leave room for the play and action of purely personal and arbitrary power. Sovereignty itself is, of course, not subject to the law, for it is the author and source of law; but in our system, while sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people, by whom and for whom all government exists and acts. And the

law is the definition and limitation of power. It is, indeed quite true, that there must always be lodged somewhere, and in some person or body, the authority of final decision; and in many cases of mere administration the responsibility is purely political, no appeal lying except to the ultimate tribunal of public judgment, exercised either in the pressure of opinion or by means of the suffrage. But the fundamental rights of life, liberty and the pursuit of happiness, considered as individual possessions, are secured by those maxims of constitutional law which are the monuments showing the victorious progress of the race in securing to men the blessings of civilization under the reign of just and equal laws, so that, in the famous language of the Massachusetts Bill of Rights, the government of the commonwealth "may be a government of laws and not of men."

Yick Wo v. Hopkins, 118 U. S. 356.

Whether or not any act on the part of the State goes beyond the limitations placed upon the police power depends upon the facts and circumstances surrounding each case, and the fact that the legislature has determined that the prohibition of a business or calling is necessary to protect the public welfare does not make it so.

Another principle involved in the exercise of the police power, which it is hardly necessary to state,

is that a mere legislative declaration that a business or occupation, harmless and innocous in itself, is inimical to the public interest, either as a whole or as to some feature of its conduct, cannot make it so, unless by reason of surrounding conditions the declaration can be said to accord with the fact as based upon common observation and common experience. The legislature cannot by its mere *ipse dixit* make that a guilty thing which is intrinsically an innocent one. It would be idle, for instance, for the Legislature to declare that the occupation of farming or horticulturist was in its nature inimical to the public interest and to undertake to regulate the hours of the day in which the work of those great industries should be prosecuted. Such an attempt would, under existing conditions, at least, be treated only with derision, as falling wholly without the bounds of reason, and as involving a mere arbitrary attempt to interfere with the liberty of the citizen. In other words, any attempt at police regulation which interferes with the individual in the conduct of an innocent and legitimate business must have an appreciable relation to some public evil justly to be apprehended, and be reasonably calculated to avoid such evil.

Yee Gee v. City and County of San Francisco, 225 Fed. 757.

Though this act by its terms does not prohibit the business of conducting a private school, those who are engaged in that business are not estopped from claiming the protection of the Constitution against the injurious effects of the legislation.

> The courts are not bound by mere forms, nor are they to be misled by mere pretences. They are at liberty—indeed, are under a solemn duty—to look at the substance of things, whenever they enter upon the inquiry whether the legislature has transcended the limits of its authority. If, therefore, a statute purporting to have been enacted to protect the public health, the public morals, or the public safety, has no real or substantial relation to those objects, or is a palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the Constitution.
>
> Mugler v. Kansas, 123 U. S. 623.

It is the practical operation and effect of the legislation and not its terms or avowed purpose that determines its validity. A bill may be enacted for one purpose, but its practical operation may reach matters entirely beyond its intent, and its validity is determined by what it does and not by what it was intended to accomplish. The state of Minnesota passed an act providing that no fresh meats should be sold within the

state unless inspected by a local inspector in Minnesota within twenty-four hours before slaughter. The act was entitled an act for the protection of public health but it was held in the case of *Minnesota v. Barber,* 136 U. S. 313, that the practical operation of the act was a restriction upon interstate commerce. The state of New York passed an act providing that the captain of every ship arriving in New York should, within twenty-four hours after arrival, post a bond in the sum of $300 for each passenger arriving on his vessel from a foreign port, to protect the city of New York and other cities of the state from such passenger becoming a public charge, but that the captain could avoid posting the bond if he would, within the time specified, pay the sum of one dollar and fifty cents for each of such passengers, and in case he failed to either post the bond or pay the specified sum he would be liable to a penalty of $500 which should be a lien on the vessel. This act applied to the master and owners of the vessel; its avowed purpose was to protect the public against the support of pauper immigrants, but it was held in *Henderson v. Mayor of New York,* 92 U. S. 259, that the practical effect of the act was a tax on the passengers.

So the practical operation and effect of this act is to prohibit the business of conducting private schools as it takes away from such business the means by which it exists.

Can this business be prohibited in the absence of a clear showing that such prohibition is necessary to protect or promote the public welfare? Appellants cite the various liquor laws in support of their contention that the State may absolutely prohibit a business whenever, in the judgment of the legislature, such prohibition is necessary. The right to engage in the liquor business has never been considered an inherent right. It is a business that has always been regarded as harmful and vicious, existing not as a matter of right but by permission and being always subject to the legislative will.

> For we cannot shut out of view the facts within the knowledge of all, that the public health, the public morals and the public safety may be endangered by the general use of intoxicating drinks; nor the fact established by statistics accessible to everyone, that the idleness, disorder, pauperism and crime existing in the country are, in some degree at least, traceable to this evil.
>
> Mugler v. Kansas, 123 U. S. 623.

A statute of California gave a board of supervisors power to grant or refuse licenses to conduct laundries in certain classes of buildings within the city of San Francisco. This statute was before the Court in the case of *Yick Wo v. Hopkins*, 118 U. S. 356, and was held to be unconstitutional and void. A similar act gave a like power to a similar board in the same city to grant

or refuse licenses to conduct retail liquor businesses and this statute was sustained in the case of *Crowley v. Christensen*, 137 U. S. 86, wherein the two classes of businesses are distinguished:

> There is no inherent right in a citizen to thus sell intoxicating liquors by retail; it is not a privilege of a citizen of the State or of a citizen of the United States. As it is a business attended with danger to the community it may, as already said, be entirely prohibited, or be permitted under such conditions as will limit to the utmost is evils. The manner and extent of regulation rest in the discretion of the governing authority. That authority may vest in such officers as it may deem proper the power of passing upon applications for permission to carry it on, and to issue licenses for that purpose. It is a matter of legislative will only. As in many other cases the officers may not always exercise the power conferred upon them with wisdom or justice to the parties affected. But that is a matter which does not affect the authority of the State; nor is it one which can be brought under the cognizance of the courts of the United States.
>
> * * * * * *
>
> It will thus be seen that that case (Yick Wo v. Hopkins) was essentially different from the one now under consideration, the ordinance thus held invalid vesting uncontrolled discretion in the board

of supervisors with reference to a business harmless in itself and useful to the community; and the discretion appearing to have been exercised for the express purpose of depriving the petitioner of a privilege that extended to others. In the present case the business is not one that any person is permitted to carry on without a license, but one that may be entirely prohibited or subjected to such restrictions as the governing authority of the city may prescribe.

Crowley v. Christensen, 137 U. S. 86.

No person has an inherent right to do that which, in the judgment of all men, is harmful, vicious and dangerous to the welfare of the community. There is no inherent right to sell opium, conduct a house of prostitution, or maintain a gambling establishment. All such businesses may be prohibited at the will of the legislative body, but this power of the legislature does not extend to businesses that have ever been regarded as useful and beneficial to the community.

There are other businesses, while not in themselves vicious or harmful, are classed as non-useful occupations, and which under certain circumstances may become vicious and harmful. Such businesses may also be prohibited in the interest of the health, the morals and general welfare of the public and the necessity of such prohibition is largely within the discretion of the legislative

body. Thus the business of speculating on the market might be prohibited (*Booth v. Illinois,* 184 U. S. 425); so might the business of conducting a billiard hall be prohibited (*Murphy v. California,* 225 U. S. 623).

> The Fourteenth Amendment protects the citizen in his right to engage in any lawful business, but it does not prevent legislation intended to regulate useful occupations which because of their nature or location, may prove injurious or offensive to the public. Neither does it prevent a municipality from prohibiting any business which is inherently vicious and harmful. But between the useful business which may be regulated and the vicious business which may be prohibited lie many non-useful occupations, which may or may not be harmful to the public, according to local conditions, or the manner in which they are conducted.
>
> Murphy v. California, 225 U. S. 623.

We find, however, no instances of a distinctly useful and beneficial business being absolutely prohibited by statute. The business in which this appellee is engaged has ever been regarded as a distinctly useful and beneficial business and an asset to any community. In all the years that this business has been conducted in this country, its beneficial effects have never been questioned, and the occupation has been encouraged, not only by public sentiment but, in some states, by con-

tributions from the public funds. It may be true that some private schools are not properly conducted; it may be true that there are some schools in the state of Oregon that do not measure up to proper standards, but if that be the case, there is nothing about them that cannot be controlled by proper regulations which the State has the power to prescribe and which the state does prescribe.

> Because abuses may and probably do, grow up in connection with this business, is adequate reason for hedging it about by proper regulations. But this is not enough to justify destruction of one's right to follow a distinctly useful calling in an upright way. Certainly there is no profession, possibly no business, which does not offer peculiar opportunities for reprehensible practices; and as to every one of them, no doubt, some can be found quite ready earnestly to maintain that its supression would be in the public interests. Skillfully directed agitation might also bring about apparent condemnation of any one of them by the public. Happily for all, the fundamental guarantees of the Constitution cannot be freely submerged if and whenever some ostensible justification is advanced and the police power invoked.
>
> Adams v. Tanner, 244 U. S. 590.

The facts do not reveal that this legislation has any real, substantial and direct relation to any competent

policy of the State, or that it is reasonably necessary to correct an existing evil or promote the general welfare of the people. It is absurd to say that private schools are responsible for juvenile crimes or that they are being conducted by those who are disloyal to our government. There is not a single fact or single authority sustaining the assertion that these schools are preventing the assimilation of the foreign-born, or are endangering the public school system, or increasing religious prejudice, or are not giving proper instruction. All these propositions have been advanced as excuses and not as reasons, and it cannot be said that the legislation has any reasonable relation to any of them.

In all our history the police power has never been extended to the destruction of a useful and beneficial business. The decisions of our courts are all in accord that such businesses may not even be regulated beyond the necessities of the case, to hold otherwise is to take all protection from the individual and give unlimited latitude to arbitrary power.

If there be a condition in the private schools of Oregon, which we do not admit, that needs correcting for the best interests of the public, the remedy for that condition is in proper regulation, which is clearly within the power of the state. If the State may prohibit this useful business because it is not properly conducted, it may, on the same theory, prohibit any business in which its people are engaged. There is nothing more im-

portant to the welfare of a community than a pure milk supply, but the state has not the power under the guise of protecting public health, to say that it shall be unlawful to purchase milk from any dairy except that conducted by the state. When the state of Oregon undertook to strangle the business of this appellee by denying to it the patronage upon which its business depends, the state exceeded its powers of sovereignty and deprived this appellee of its property without due process of law. (Adams v. Tanner, 244 U. S. 590; Meyer v. Nebraska, 262 U. S. 290.)

Right to Maintain the Suit.

The right of appellee to maintain this suit has been questioned, though it is admitted that appellee is now losing a part of its business by reason of the existence of the statute and the threat on the part of the appellants to enforce it when it becomes effective by its terms, and that the enforcement of the act will wholly destroy its business. The jurisdiction of a court of equity under such circumstances is well established.

> Equity jurisdiction will be exercised to enjoin the threatened enforcement of a state law which contravenes the Federal Constitution whenever it is essential in order effectually to protect property rights and the rights of persons against injuries otherwise irremediable; and in such a case a person, who as an officer of the state, is clothed with the duty of enforcing its laws and who

threatens and is about to commence proceedings, either civil or criminal, to enforce such a law against parties affected, may be enjoined from such action by a Federal Court of equity.

Terrance v. Thompson, 263 U. S. 197.

It is further contended that the bill does not disclose any actual proceeding on the part of the city to displace complainants rights under the contract, that mere apprehension that illegal action may be taken by the city cannot be the basis of enjoining such action, and that therefore the Circuit Court did right in dismissing the bill. We cannot accede to this contention. It is one often made in cases where bills in equity are filed to prevent anticipated and threatened action. But it is one of the most valuable features of equity jurisdiction, to anticipate and prevent a threatened injury, where the damages would be insufficient or irreparable. The exercise of such jurisdiction is for the benefit of both parties; in disclosing to the defendant that he is proceeding without warrant of law, and in proctecting the complainant from injuries which, if inflicted, would be wholly destructive of his right.

Vicksbury Waterworks Company v. Vicksburg, 185 U. S. 65.

> Plaintiffs, however, are not required to wait until criminal prosecutions are actually brought against them before invoking the equitable relief to which they are entitled under the circumstances.
>
> Detroit Creamery Co. v. Kinnane, 264 Fed. 845.

The injunction was not granted by the lower court wholly to prevent a future injury but to stay an injury now in progress and which will become more severe as the time for the enforcement of the act approaches. If there is any substance to that great maxim that "equity will not suffer a wrong to be without a remedy," this appellee is clearly entitled to come before the court and ask to be protected in its pursuit of a useful and legitimate business.

Conclusion.

While we have presented this case wholly on the theory that it deprives this appellee of its property without due process of law, we do not wish to be understood as contending that the constitutional questions involved in this legislation is confined to that one proposition. While the State has the power to require that all its citizens shall receive instruction in certain things, we do not believe that the State has the power to say that education shall not go beyond the instruction it offers. A law which prescribes that all shall attend one school, limits education to the instruction offered in that school. Individual freedom to pursue any educational

course that may seem best cannot be denied, and the State has no power to control this choice beyond placing minimum requirements. Parents are at liberty to say that their children shall receive certain instruction in addition to the instruction required by the State and it matters not whether that instruction is in religious matters, military tactics, physical training or anything else so long as it does not interfere with the rights of others.

This appellee is engaged in the business of conducting a private school for profit and is particularly concerned with its right to continue that business, but the liberty of the individual might well be considered in connection with the rights of appellee because restrictions upon the liberty of the individual has a direct relation to the business of appellee.

The legislation in question was not conceived by any public necessity and is not designed and intended to correct an existing evil or promote the public welfare. The designation "compulsory education" attached to the measure is an excuse and not a reason for its enactment. It adds nothing to the policy of compulsory education; it does not broaden the field nor does it raise the standard. Its effect is to destroy the business of those who are engaged in conducting private schools without serving any purpose of public utility. No legislation interfering with the freedom of the individual or the rights of property has ever been upheld under such

conditions and there is not a fact in the record of this case upon which this legislation can be sustained.

Respectfully submitted,

JOHN C. VEATCH,

Attorney for Appellee, Hill Military Academy.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1924

No. 584

WALTER M. PIERCE, as Governor of the State of Oregon; ISAAC H. VAN WINKLE, as Attorney General of the State of Oregon, and STANLEY MYERS, as District Attorney for Multnomah County, State of Oregon,

Appellants,

vs.

HILL MILITARY ACADEMY, A CORPORATION,

Appellee.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON.

SUPPLEMENTAL BRIEF OF APPELLEE, HILL MILITARY ACADEMY

When this appellee's brief was printed, the official reports containing certain statistics used in the brief were not available and the information was obtained

through the office of the Superintendent of Public Instruction of the State of Oregon. The official reports of that officer reveal that some of the statistics quoted in the brief are incorrect.

The following statistics apply to page 32 of this appellee's brief:

School Enrollment in the State of Oregon—

School Year	1922-1923	1923-1924
Public High Schools	32,603	34,719
Public Elementary Schools	136,773	140,791
Totals	169,376	175,510
Private High Schools	675	684
Private Elementary Schools	10,680	11,723
	11,355	12,407

The following statistics apply to page 26 of this appellee's brief:

School Enrollment in the United States:

Public Schools	23,777,705
Private Schools	1,699,481

Respectfully submitted,

JOHN C. VEATCH,
Attorney for Appellee,
Hill Military Academy.

Office Supreme Court, U. S.
FILED
MAR 16 1925
WM. R. STANSBURY
Clerk

Supreme Court of the United States

OCTOBER TERM, 1924.

No. 583

WALTER M. PIERCE, as Governor of the State of Oregon, and others,

Appellants,

against

THE SOCIETY OF THE SISTERS OF THE HOLY NAME OF JESUS AND MARY,

Appellee.

No. 584

WALTER M. PIERCE, as Governor of the State of Oregon, and others,

Appellants,

against

HILL MILITARY ACADEMY,

Appellee.

Appeals from the District Court of the United States for the District of Oregon.

BRIEF FOR AMERICAN JEWISH COMMITTEE.

LOUIS MARSHALL,
Amicus Curiae.

PRESS OF FREDERICK PETER, 30 Washington Street, New York City.

Supreme Court of the United States

OCTOBER TERM, 1924.

No. 583

WALTER M. PIERCE, as Governor of the State of Oregon, and others,

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WALTER M. PIERCE, as Governor of the State of Oregon, and others,

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Appellee.

Appeals from the District Court of the United States for the District of Oregon.

BRIEF OF LOUIS MARSHALL, AMICUS CURIAE, ON BEHALF OF APPELLEES.

The comprehensive argument presented by Mr. Guthrie renders it unnecessary to enter upon a detailed discussion of the authorities bearing upon these cases. It is in every respect adopted by those

on whose behalf I am intervening—The American Jewish Committee, representing the parents of Jewish children and the teachers who maintain private schools for the education of Jewish children, in this country. They regard Chapter 1 of the General Laws of 1923 of the State of Oregon as an infringement upon the liberty of the individual and a deprivation of those who maintain such private schools, not only of their liberty, but also of their property.

Analysis of Statute.

An analysis of the legislative act which is challenged will be useful, for the purpose of ascertaining and measuring its effect. The statute makes it a misdemeanor for "any parent, guardian, or other person" having control or charge or custody of a child under the age of sixteen years and of the age of eight years or over, to "fail or neglect or refuse to send such child to a public school for a period of time a public school shall be held during the current year" in the district in which the child resides.

This language is all-embracing. It relates to *any parent,* guardian or other person, and to *any child* between the age of eight and sixteen years, and makes the attendance of such child at a public school, as distinguished from a private or parochial school, of so obligatory a nature that the failure, neglect or refusal to send the child to such school becomes a criminal act, "each day's failure to send such child to a public school" constituting a separate offense.

This act is not a compulsory education law, the statutes of Oregon containing adequate provisions to require the attendance of all children within the

state at a public or private school, or at the home of the parent or guardian. It proceeds upon the clearly expressed theory of compulsory attendance at a public school. This is emphasized by the exceptions contained in the act, whereby it is provided that certain children "shall not be required to attend *public schools.*" They relate:

(a) To any child who is abnormal, subnormal or physically unable to attend school.

(b) To any child who has completed the eighth grade in accordance with the provisions of the state course of study.

(c) To children of certain ages who reside at a considerable distance from a public school, unless transportation to and from school is supplied by the school district, in which event the exemption from attendance at public school is not to apply.

(d) To any child taught by its parent or a private teacher such subjects as are usually taught in the first eight years in a public school. This is coupled with the condition that before such child can be taught by a parent or private teacher the parent or teacher must receive express permission from the county superintendent to teach. The child is required to report to the superintendent, or to some other person designated by him, at least once every three months, and to take an examination in the work covered. If the county superintendent shall determine that the child is not being properly taught he is to order the parent, guardian, or other person, to send the child to the public school for the remainder of the school year.

It is to be noted that the exception relating to children receiving private instruction is confined

to cases where the parent or a private teacher gives the instruction. That eliminates instruction in private or parochial schools.

The Effect of the Statute.

The manifest effect of this legislation, therefore, is to forbid instruction otherwise than in the public schools and by parents or private teachers under conditions set forth in the statute, and under the unlimited control of the county school superintendent, or of the person designated by him, and subject to his sole determination as to whether the parent or private teacher may instruct and as to whether or not proper instruction is given by them. This necessarily means the elimination of private and parochial schools, since it would be physically impossible for children of tender years, after having taken the course prescribed in the public schools, to attend any private or parochial school for the purpose of receiving instruction.

Prior to the passage of this act, under the law of Oregon parents were permitted to have their children taught in a private school. (Act of February 25, 1889, Chapter 1; Act of February 27, 1901, Section 1; Act of February 23, 1907, Section 1, subdivision a.) By the latest of these acts children were not required to attend public schools if taught in a private or parochial school for a period of time equal to that required in the public schools.

The Act of 1923 thus renders unlawful what previously had been lawful, not only pursuant to express enactment of the Legislature, but also according to the unquestioned practice of the citizens of Oregon from the days when it was still a territory.

In fact the public school has been a recent crea-

tion, dating from the middle of the nineteenth century. Prior to that time the only existing schools were private, parochial or denominational. Except in a few states, even at the present time, but few institutions of higher learning are public in character. They are conducted by private corporations, and to a large extent by institutions operated under denominational auspices. Many of our greatest universities were called into existence by religious bodies, and some of them are still conducted and managed by such bodies.

The Act under review is at present confined to the education of children between the ages of eight and sixteen years. If this legislation is valid, then it can be extended so as to include not only all minors, but all persons, regardless of age. It might limit the right of any person to secure an education except by attending a public institution. The right to choose the medium whereby an education is to be received is taken away, not only from the parent or guardian of the pupil or student, but also from the pupil or student himself. It matters not whether the public institution in the district in which the person for whom an education is sought or who seeks an education resides, may be of an inferior type or may be conducted by inefficient or temperamentally disqualified teachers. It matters not if a private or parochial school which has acquired a reputation for excellence and thoroughness, is conducted in the district. It matters not if personal or conscientious reasons exist which would lead to a preference for education in a private or parochial school rather than in a public school, or that the parents, or the children themselves, desire that instruction shall be given in a religious atmosphere. The statute categorically declares that the public school alone shall

and by whom instruction shall be given. If such power can be asserted, then it will lead inevitably to the stifling of thought. If the will of a temporary majority may thus control, then it is conceivable that it may prohibit the teaching of science, of the classics, of modern languages and literature, of art, and of nature study. A majority might reach the conclusion that the teaching of the Darwinian theory, or of the philosophy of Kant or Spinoza, or the ideas of Montesquine, or of Jeremy Bentham, or of John Stuart Mill, or of Emerson, should be prohibited. In some parts of this country a majority, if it possessed the power, would unquestionably limit instruction in the public schools to the Three R's. New York has recently witnessed an attempt to eliminate from the handbooks of history used in the public schools, any references to England which were not to its discredit, and any reference to America which, although truthful, did not indicate that it had at all times been immune to criticism.

Recognizing in the main the great merit of our public school system, it is nevertheless unthinkable that public schools alone shall, by legislative compulsion rather than by their own merits, be made the only medium of education in this country. Such a policy would necessarily lead to their deterioration. The absence of the right of selection would at once lower the standards of education. If the children of the country are to be educated upon a dead level of uniformity and by a single method, then eventually our nation would consist of mechanical Robots and standardized Babbitts.

On the theory which seeks to eliminate private and parochial schools, the Legislature might as well compel all of the inhabitants of the land to sub-

scribe to the same newspaper, to attend the same church, to become members of the same political party, and to join the same lodge. Indeed, it would be less of an invasion of liberty to do any of these things than to say to parents that, regardless of their ambitions and aspirations for their children, regardless of the love and affection which they bear to them, regardless of their conscientious beliefs respecting the duty which they owe for the ethical, moral and religious rearing of their children, the State may come in and take away from them that sacred right and the performance of the duty which they conscientiously believe that they owe to their children and to future generations. Our children do not belong to the State. As a rule the poorest of parents are better qualified to take care of their children than the best politician or professional agitator could possibly be.

The Arguments Advanced in Favor of this Legislation.

The arguments by the proponents of this measure submitted to the voters of Oregon prior to the election of November 7, 1922, are illuminating. It is stated that "the inspiration for this Act" is a resolution adopted by the Supreme Council A. A. S. Rite for the Southern Jurisdiction of the United States, by the Grand Lodge of Oregon F. & A. M., and by the Imperial Council A. A. O. Nobles Mystic Shrine. That resolution proclaims the belief of these councils "in the free and compulsory education of the children of our nation in public primary schools supported by public taxation, upon which all children shall attend and be instructed in the English language only without regard to race or creed, as the only sure foundation for the perpetua-

tion and preservation of our free institutions guaranteed by the Constitution of the United States."

This is scarcely the statement of a reason. It is an opinion by a group of private individuals, representing their personal preferences and evidently prepared to effectuate them by compulsory proceedings. Apparently they are seeking to compel those of various races and creeds to submit to their compulsory methods. They do not take into account the conscientious convictions of others, who, though willing to contribute their share of the taxation imposed for the support of public schools, are so strong in their preferences for private or parochial schools as to pay out of their own pockets, and not out of the public treasury, the cost of the education received by their children at such schools.

Certainly those who are ready to make this sacrifice, if such it may be called, are not indifferent to the cause of education, or to the public welfare, or to the future happiness of their own children. Nor are they hostile to our free institutions or to the guaranties of the Constitution because by their conduct they demonstrate their devotion to those guaranties of liberty which are enshrined in our organic law.

The solitary argument presented in this Official Pamphlet in favor of this legislation (Appendix I to Appellee's Brief, pp. 24, 25), contains the following additional statements:

> (a) "Our nation supports the public school for the sole purpose of self-preservation."

That is a fallacy. The nation does not support the public schools at all. The taxpayers in the various localities render such support. We may frankly concede that it is for the public welfare;

but that is subserved by private, parochial and religious schools, and by the instruction given by parents and private teachers as well. The aggregate of all of them constitutes the contribution by the public in its entirety to the cause of education.

The nation is no more preserved by the public school than it is by the other agencies. The Fathers of the Republic and a large proportion of our finest citizens never attended a public school, and today a large number of the best exemplars of Americanism have received and are receiving their education outside of public schools. In fact, in the City of New York the accommodation afforded by our public schools are inadequate to provide properly for the children of school age, and they are required to attend on part time or to seek instruction in private and parochial schools.

Under the Oregon statute, however inadequate the facilities of the public schools may be, attendance at private and parochial schools, however superior their accommodations and their instruction may be, is practically prohibited.

> (b) "The assimilation and education of our foreign born citizens in the principles of our government, the hopes and inspiration of our people, are best secured by and through attendance of all children in our public schools."

There is no foundation in truth for this statement. The private and parochial schools which exist throughout the country are conducted on the same patriotic lines as are our public schools. Those who are in responsible management and the teaching faculties are just as alive to the necessity of instilling the principles of our government in foreign and native born citizens alike, as are those

in charge of our public schools. They are men and women of education and culture who have devoted themselves to the sacred duty of educating the young, and who by their conduct have evinced the same patriotism as actuates the average citizen of the United States.

The assimilation, so-called, of our foreign born citizens is advanced rather than retarded by the private, parochial and religious schools. It is in such schools as these, of which many shining examples are to be found in every large community in the northern and eastern parts of the United States, that special efforts are made not only to educate the foreign born citizen, but the immigrant, in the fundamental principles of our government; and it may be said without exaggeration that our foreign born citizens frequently have a better understanding of the principles of our government than is possessed by many of our native born citizens. They have better opportunity to appreciate the differences between our form of government and that prevailing in the countries in which they were born, and they devote themselves with greater intensity to an understanding of those principles than is the case with many a descendant of the elder population.

> (c) "We must now halt those coming to our country from forming groups, establishing schools, and thereby bring up their children in an environment often antagonistic to the principles of our government."

The legislation of recent years has halted immigration into the United States, even though much of our growth and prosperity, as well as many other gifts, as recently pointed out by Dr. Charles W. Eliot, has been due to immigration.

There is no such thing as the creation by the newer population of an environment antagonistic to the principles of our government. Whatever their environment may be, their children cannot be distinguished from those who have long abided here, and they participate in everything that tends to the maintenance of the fundamental principles of our Federal and State governments. They have proven it by their devotion to our institutions both in times of peace and of war, and have supplied their full quotas to the armies of the Republic.

> (d) "Mix those with prejudices in the public school melting pot for a few years while their minds are plastic, and finally bring out the finished product—a true American."

That is a mere figure of speech, which cannot stand the test of analysis. There is no such thing as a melting pot, anthropologically speaking. If there were, it would be a misfortune. However much iron and copper and lead and zinc and gold and silver may be mixed, the net result is a product which possesses none of the virtues of the original metals and is utterly useless. Far better would it be to purify and refine the original metals, for then their individual values would be enhanced. The difficulty with prejudices, even in the public schools, is that they are frequently aggravated by contact and collision. Among the advantages of private and parochial schools is the fact that there prejudices are apt to be mitigated. At all events they are not stimulated in a truly religious atmosphere or in a genuine cultural environment.

> (e) "The permanency of this nation rests in the education of its youth in our public schools, where they will be correctly instructed

> (f) "When every parent in our land has a child in our public school, then and only then will there be united interest in the growth and higher efficiency of our public schools."

What is to prevent the attainment of such higher efficiency, which evidently implies that that stage of efficiency has not been reached so long as there are children in the land who receive their education in private and parochial schools. Does efficiency depend upon numbers? Is it not the fact that the efficiency of many of our public schools has been hampered by the very fact that classes are too large, and that proper discipline cannot be maintained because of such numbers? Can it not be fairly said that so far as efficiency is concerned the highest achievement has thus far been witnessed in our private schools, as to which it was conceded by Mr. Claxton, former United States Commissioner of Education, that "the private schools and colleges have been the salvation of our public schools," and that "these private institutions have their place in our educational system; they prevent it from becoming autocratic and arbitrary and encourage its growth along new lines."

> (g) "Our children must not under any pretext, be it based upon money, creed or social status, be divided into antagonistic groups, cliques or cults there to absorb the narrow views of life as they are taught."

Here those who send their children to private and parochial schools because of their creed are charged with constituting antagonistic groups and as absorbing "narrow views of life." In other words, parents who are anxious for the future welfare and happiness of their children and who seek

to dedicate them to moral, ethical and religious principles, are denounced for sending their children to private and parochial schools, because, forsooth, the views of life which they there absorb are characterized as "narrow".

What does that mean but an attempt on the part of the protagonists for this law to sit in judgment upon their fellow-citizens whose ideals differ from theirs? How does such a mental attitude differ from that which prevailed when governments sought to enforce uniformity of religious beliefs and punished nonconformists as criminals? With the most extraordinary ingenuousness they look upon those of other cults as striving "not for the good of the whole but for the supremacy of themselves." What about the cult of those who adopted the resolutions which are described as "the inspiration for the Act," of those who are seeking to force the youth of this country into the public schools and to destroy private and parochial schools, regardless of the wishes of parents and guardians and of the various religious elements in our poulation?

This is a demonstration of the evils of intolerance and of the dangers inherent in this legislation, which undermines the fundamental concepts of liberty and which has the inevitable tendency of carrying us back to those evil days which preceded the adoption of our American Constitutions.

The noble words uttered by the President on his inauguration a few days ago, redeclare the great truth which is ignored in this legislation:

> "The fundamental precept of liberty is toleration. We cannot permit any inquisition either within or without the law or apply any religious test to the holding of office. The mind of America must be forever free."

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SUPREME COURT
of the United States

OCTOBER TERM, 1924.

No. 583

WALTER M. PIERCE, as Governor of the State of Oregon; Isaac H. Van Winkle, as Attorney General of the State of Oregon, and Stanley Myers, as District Attorney for Multnomah County, State of Oregon, *Appellants,*

vs.

THE SOCIETY OF THE SISTERS OF THE HOLY NAMES OF JESUS AND MARY, *Appellee.*

No. 584

WALTER M. PIERCE, as Governor of the State of Oregon; Isaac H. Van Winkle, as Attorney General of the State of Oregon, and Stanley Myers, as District Attorney for Multnomah County, State of Oregon, *Appellants,*

vs.

HILL MILITARY ACADEMY, Appellee.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES, FOR THE DISTRICT OF OREGON.

BRIEF OF WM. A. WILLIAMS AS AMICUS CURIAE.

STATEMENT.

In presenting the following remarks upon the issues before the Court, by grace of Court and courtesy of Counsel, I speak for and in behalf of the

North Pacific Union Conference of Seventh-Day Adventists, operating, within the territorial jurisdiction of the statute, thirty-three church schools embracing grades one to eight, employing forty-five teachers, with an enrollment of 900 pupils, and school property valued at $47,000.00, and academies depending upon said schools for patronage, employing twenty-two teachers with an enrollment of three hundred pupils and school property valued at $76,-000.00; all being a part of a general school system of the Seventh-Day Adventist Denomination operating in every state of the union and every civilized country of the globe, and carrying its primary instruction into nearly every uncivilized country.

The rights of those for whom I speak are equally affected with the rights of the appellees, by the Oregon Law, which forms the issue in this case.

The Appellants refer to the law as a "Compulsory School Law", but it is not, alone, that; for a compulsory school law already existed upon the Statute Books of Oregon, and hence it is something more.

The two laws, one called the "old law" and the one in question here, called the "New Law", have been clearly and sufficiently set forth by other briefs herein.

The appellees are incorporated and acquired their charters under the laws existing upon the statute books of the State of Oregon ever since 1864, and which still exist and offer incorporation to any private persons as well as denominational and educational societies similar to appellees; and under the same law appellees could, incorporate tomorrow.

We claim that the statute in question is unconstitutional as being contrary to the 14th Amendment of the Constitution of the United States, and as impairing the obligations of contracts, and as having the effect of annulling vested rights.

We also claim that this question should be viewed not as one arising in the formation of a government, or as one arising where no grant has been made and no rights have been vested on the faith of the law as it existed at the incorporation of the appellees.

POINTS AND AUTHORITIES.

Natural Rights.

Point I.

This statute attempts to extinguish natural rights, infringes the provisions of the Constitution and is void.

Meyer vs. Nebraska, 262 U. S. 390, 67 L. ed. 1042, 43 Sup. Ct. Rep. 625, 29 A. L. R. 1446.

Point II.

The Schools conducted by the appellees are not inherently dangerous to the peace, morals or happiness of society and are not opposed to the general public policy of the State of Oregon.

O. L. Secs. 6998-7014.

Point III.

The parent has the common law, or natural, right to direct the education of the child.

Denton vs. James, 107 Kansas 729, 193 Pac. 307,
12 A. L. R. 1146, 1152.

Civil Rights.

Point I.

The state has no power to abrogate a vested right or to impair the obligation of contracts.

12 C. J. 956, Sec. 486.
Const. of Or., Art. XI, Sec. 2.
1 B. & C.'s Codes & Statutes of Oregon 60.
Lorntsen vs. Union Fisherman's Co., 71 Ore. 540, 543-545.
First National Bank vs. Multnomah State Bank, 87 Ore. 423, 433-434.

Police Power.

Point I.

Police power cannot be delegated to a board or an individual to be exercised at discretion.

12 C. J. 911, Sec. 42; *Noel vs. People,* 187 Ill. 587, 58 N. E. 616, 52 L. R. A. 287.
22 Am. & Eng. Ency. Law (2 ed.) 920 and n. 7.

Point II.

Police power is a grant of authority from the people to their governmental agents.

Spann vs. Dallas, 111 Tex. 350, 235 S. W. 513, 19 A. L. R. 1387.

Point III.

The exercise of police power on any occasion must be reasonably necessary and the manner of its exercise must be reasonable and appropriate.

Schiller Piano Co. vs. Ill. Northern Utilities Co., 288 Ill. 580, 123 N. E. 631, 11 A. L. R. 454.

ARGUMENT.

Natural Rights

As the decision of this case must, at last, rest upon a few fundamental principles and not upon any "new thing", a statement made by Hon. Elihu Root in an address to a meeting of the Bar Association, San Francisco, March 21, 1922, lays down the principle which I have accepted as a guiding light:

> "We are in danger of getting lost in this labyrinth. But two things are certain: First, that in the midst of all this multitude of decisions and of statutes, if we are to get right, we must get back to the fundamental principles upon which our law rests. . . . In the thousands and hundreds of thousands of decisions and of statutes there is danger of losing the thread, there is danger of forgetting the principles."

The appellant has discussed the police power of the state as if the people had surrendered their absolute rights in the process of forming the government; but these were excepted from the compact and declared inalienable and are guaranteed by the Constitution of the United States. These guaranties constitute Articles of Faith and have been acted upon for generations.

It is admitted that persons, on entering into the social compact, "give up some rights", but it is not admitted that they give up any natural or absolute rights, for the protection of which the social compact was formed. Blackstone in discussing this question says:

> "This law of nature, being coeval with mankind and dictated by God himself, is, of course, superior in obligation to any other. It is binding over all the globe in all countries and at all times; no human laws are of any validity, if contrary to this; and such of them as are valid derive all their force and all their authority, mediately or immediately, from this original."
>
> Shars. Bl. Com. 41.

The earliest organization known to man is the family, the strongest unit in any government; but this law tends to weaken family discipline, supplants parental authority and substitutes Honor the State, for "Honor thy Father and thy Mother". It deprives the parent of natural rights and equally deprives the child.

The Court, in *Denton vs. James*, supra, says on this subject:

"Man has no higher right or interest or happiness than that for which the words "family" and "home" stand. Very often it is said, with a touch of derision, that a child is not a chattel, and a parent has no property in his child giving him right to custody, which is very true. The interest which a parent has in the nurture of his own offspring, and in nearness to them for that purpose, lies in a different plane from that occupied by property; it transcends property. On the child's side, it has no higher welfare than to be reared by its parents. The state has no higher welfare than to have children reared by their parents, and free government is instituted for the protection and benefit of parenthood as one of the natural rights which the citizen possesses."

Denton vs. James, 12 A. L. R. 1151.

The natural rights of the parent for which we contend in this case preceded the state, and the government, formed to "secure these", certainly ought not to take any action which would subvert the very purpose of its creation. If the position of the appellant is correct the government becomes "a house divided against itself".

These natural rights have been protected by every Bill of Rights declared in any government at any time, and are always spoken of as existing, but never as bestowed by government.

The position of the appellant cannot be strengthened by any claim that the statute in question was passed by the majority vote. Every bill of rights has been interposed between power and people, aggressive power usurped by princes or by majorities, and in this matter Mr. Cooley says:

> "And these governing powers will be no less disposed to be aggressive when chosen by majorities, than when selected by the accident of birth, or at the will of privileged classes. Indeed, if during the long struggle for constitutional liberty in England, covering the whole of the seventeenth century, importance was justly attached to a distinct declaration and enumeration of individual rights on the part of the government, when it was still in the power of the governing authorities to infringe upon or to abrogate them at any time, and when, consequently, the declaration could possess only a moral force, a similar declaration would appear to be even of more value in the Constitution of the United States, where it would constitute authoritative law, and be subject to no modification or repeal, except by the people themselves whose rights it was designed to protect, nor even by them except in the manner by the Constitution provided."
>
> Cooley Const. Lim. 5th Ed. 315 * p. 258.

Man was not made for governments, but governments for man. Man preceded governments, man created governments. He created them to make him secure in the enjoyment of his natural, inalienable rights:

> "We hold these truths to be self evident, that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty and the pursuit of happiness; that, to *secure* these rights, governments are instituted among men, deriving their just powers from the consent of the governed."

and the Constitution followed

"to *secure* the blessings of liberty."

In *Spann vs. Dallas,* supra, the court says:

> "Constitutional powers can never transcend constitutional rights. The police power is subject to the limitations imposed by the constitution upon every power of government; and it will not be suffered to invade or impair the fundamental liberties of the citizen, those natural rights which are the chief concern of the constitution and for whose protection it was ordained by the people. All grants of power are to be interpreted in the light of the maxims of Magna Charta and the common law as transmuted into the bill of rights; and those things which these maxims forbid cannot be regarded as within any grant of authority made by the people to their agents. Cooley, Const. Lim. 209. In our constitution the liberties protected by the Bill of Rights are, by express provision, 'excepted out of the general powers of the government." It is declared that they 'shall forever remain inviolate,' and that 'all laws contrary thereto shall be void'."

19 A. L. R. 1390-1391.

As expressed in the Declaration of Independence, our natural rights are endowments of the Creator. Among these endowments, is the right to bring in children, rear and educate them. The family was the first institution established by the Creator among men. He also established the first educational system and put it in the family.

> "And these words which I command thee this day shall be upon thy heart and thou shalt teach them diligently unto thy children; and thou shalt talk of them when thou sittest in thy house and when thou walkest by the way, and when thou liest down and when thou risest up."

And when the first code of civil law was given, this educational system was left untouched.

In his concurring opinion in *Butchers' Union, etc., Co. vs. Crescent City, etc., Co.*, 111 U. S. 746, Justice Field said:

> "As in our intercourse with our fellow-men certain principles of morality are assumed to exist, without which society would be impossible, so certain inherent rights lie at the foundation of all governmental action, and upon a recognition of them alone can free institutions be maintained. These inherent rights have never been more happily expressed than in the Declaration of Independence, that new evangel of liberty to the people; 'We hold these truths to be self evident', that is, so plain that their truth is recognized upon their mere statement, 'that all men are endowed', not by edicts of Emperors or decrees of Parliament or acts of congress, but 'by their Creator, with certain inalienable rights,' that is, rights which cannot be bartered away or given away or taken away except in punishment of crime, 'and that among these are life, liberty and the pursuit of happiness, and to secure these', not grant them but secure them, 'governments are instituted among men, deriving their just powers from the consent of the governed'. Among these inalienable

> rights, as proclaimed in that great document, is the right of men to pursue their happiness, by which is meant the right to pursue any lawful business or vocation, in any manner not inconsistent with the equal rights of others, which may increase or develop their faculties, so as to give them their highest enjoyment."

The same great Judge in his dissenting opinion in the Slaughter House Cases, 16 Wall. 36, said that the

> "Fourteenth Amendment was intended to give practical effect to the Declaration of 1776 of inalienable rights, rights which are the gift of the Creator, which the law does not confer, but only recognizes."
>
> Taylor, Due Process of Law, Sec. 266, pp. 491-492.

Constitutions create no individual rights, but recognize them, and their business is to protect man in the enjoyment of his natural rights. His Creator made man a free moral agent and the constitution has made no effort to improve on him. Mr. Blackstone says:

> "That constitution or frame of government, that system of laws, is alone calculated to maintain civil liberty, which leaves the subject entire master of his own conduct, except in those points wherein the public good requires some direction or restraint."
>
> Sharswood's Bl. Com. 126.

And again:

> "For the principal aim of society is to protect individuals in the enjoyment of those absolute rights, which were vested in them by the immutable laws of nature, but which could not be preserved in peace without that mutual assistance and intercourse which is gained by the institution of friendly and social communities. Hence it follows, that the first and primary end of human laws is to maintain and regulate absolute rights of individuals. Such rights as are social and relative result from, and are posterior to, the formation of states and societies: so that to maintain and regulate these is clearly a subsequent consideration."

Id. 124.

And a note to the same thus expresses the thought:

> "Absolute rights of individuals though occupying less space in codes of law than their relatitve rights or rights of property, are nevertheless by far the most important."

And this, further:

> "The great end of society is to secure the wealth and happiness of its members."

This has a different sound from a statement quoted in the brief of appellant submitted in the Court below, and proclaimed in the affirmative argument printed in the official pamphlet preceding the election at which the statute was adopted, to-wit, "Our nation supports the public school for the sole

purpose of self preservation." Neither does it sound much like the claim of the propagandists of this law, under their assumed name "A. & A. S. R. School Committee," scattered broadcast in their campaign for its adoption, boldly asserting: "The child is first a national child. He belongs to the nation even before he belongs to himself. His education is first national and after that personal." This agrees fully with the spirit of the statute and contains the Spartan idea of submerging the individual in his citizenship.

In the case of *Meyer vs. Nebraska,* supra, the Court said:

> "The problem for our determination is whether the statute, as construed and applied, unreasonably infringes the liberty guaranteed to the plaintiff in error by the 14th Amendment. 'No state . . . shall deprive any person of life, liberty, or property without due process of law.'
>
> "While this Court has not attempted to define with exactness the liberty thus guaranteed, the term has received much consideration, and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint, but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and, generally, to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by freemen."
>
> 29 A. L. R. 1449.

There is not even a pretense of any sudden emergency calling for the enactment of this law to suppress institutions which have been operating for generations under the general laws of the state of Oregon for the very purpose of creating and maintaining such schools; and, as said by Mr. Justice McReynolds in *Meyer vs. Nebraska,* supra:

> "That the state may do much, go very far, indeed, in order to improve the quality of its citizens, physically, mentally, and morally, is clear; but the individual has certain fundamental rights which must be respected. . . .
>
> "The means adopted, we think, exceed the limitations upon the power of the state, and conflict with rights assured. . . . The interference is plain enough, and no adequate reason therefor in time of peace and domestic tranquility has been shown."
>
> 29 A. L. R. 1451.

On the other hand, the statute postponing its own operation for several years, shows conclusively that no sudden emergency called it forth and that no fear existed of approaching injury to the health, peace, or morals of the community. The statute is theoretical rather than practical.

The state of Oregon impliedly admits that private and denominational schools are not inherently injurious to the community and that the state is not opposed to them from any standpoint of public policy; for the reason that it confers upon corporations that may be organized under the general statutes full power to carry on the business of such schools, and makes special provision for their incorporation by statutes which have been in force and acted upon ever since 1864. (O. L. Secs. 6998 et seq.)

CIVIL RIGHTS.

After having granted charters to the appellees to carry on the business which the statute under consideration attempts to abolish, and after the appellees have acquired not only patronage for their schools, but large and valuable properties, the state cannot by a proper exercise of police power obliterate any of these rights, or destroy a dollar's worth of property, and this principle has been enunciated by the Supreme Court of Oregon clearly in the cases cited above.

The present law attacked in these proceedings abrogates that grant without the consent of the appellees, and has the effect of cancelling their charters. This may not be done.

In the case of *Lorntsen vs. Union Fishermans Co.*, 71 Ore. 540, Justice Burnett says, at page 544, in referring to a corporation organized under the provisions of the corporation laws of the state:

> "From *Dartmouth College vs. Woodward*, 4 Wheat. 518 (4 L. Ed. 629), down to the present time the principle has been maintained that such an offer and acceptance constitute a contract between the state and the corporation, the obligation of which cannot be impaired by any subsequent legislation. It is a compact which is within the protection of Article I, Sec. 10 of the national constitution forbidding any state to pass any law impairing the obligation of contracts, and Article I, Section 21, of our state constitution, containing the same prohibition. The identical question has been settled by the utterances of Mr. Chief Justice Thayer in *Liggett*

vs. Ladd, 17 Or. 89, 100 (21 Pac. 133, 137)."

At the time of the incorporation of the appellees and the beginning of their business under their charters granted by the state of Oregon, Article XI, Sec. 2 of the State Constitution read as follows:

> "Corporations may be formed under general laws, but shall not be created by special laws, except for municipal purposes. All laws passed pursuant to this section may be altered, amended, or repealed, but not so as to impair or destroy any vested corporate rights."
>
> B. & C.'s Codes & Statutes of Oregon, p. 60.

And no amendment of the constitution can operate to defeat the rights of these appellees; for in *First National Bank vs. Multnomah State Bank,* 87 Ore. 433, 434, considering the effect of this section of the constitution upon contracts, Mr. Justice Burnett said:

> "Neither can it be made to impair the obligation of a subscription contract made before its adoption so as to double the original liability. So far as the increased responsibility is concerned, the utmost effect it can have is to operate in favor of the depositors in a bank incorporated since the constitution was so amended."
>
> "From the time the decision was rendered in the famous case of *Dartmouth College vs. Woodward,* 4 Wheat. (U. S.) 518 (4 L. Ed. 629), to the present it has been uniformly held that any legislation that impairs the terms or condition of a pre-existing contract is void."

State ex rel. vs. Sears, 29 Ore. 580 (43 Pac. 482, 46 Pac. 785, 54 Am. St. Rep. 808).
Lorntsen vs. Union Fishermans Co., 71 Ore. 540, 544 (143 Pac. 621).

"The amendment of the clause of the constitution referred to cannot be invoked to impair the obligations of the pre-existing contract between the stockholders of the defendant bank and that corporation, nor to abridge the agreement existing between such stockholders and the state of Oregon, and this being so, the decree is reversed and one will be entered here granting to the plaintiff the relief prayed for in its complaint."
87 Or., 433-434.

POLICE POWER.

The statute in question vests the County Superintendent with authority to determine when a child "is not being properly taught", but subjects his discretion to no rule or guide, and leaves him free to exercise such discretion arbitrarily. In the case of *Noel vs. People*, supra, the Court had under consideration the power of the legislature to vest arbitrary discretion in a board of pharmacy, the particular section reading as follows:

> "The board of pharmacy may in their discretion issue permits to persons, firms or corporations engaged in business in villages or other localities, empowering them to sell the usual domestic remedies and proprietary medicines under such restrictions as the board of pharmacy may deem proper."

58 N. E. 617.

And the Court says:

> "It is manifest that section 8 vests an arbitrary power in the board of pharmacy to say who shall and who shall not sell the usual domestic and proprietary remedies in villages and other localities, and just exactly what they are allowed to sell. Section 8 in no way regulates or controls the discretion vested thereby in the board. The official discretion conferred upon the board is unregulated, and not subjected to any permanent provisions operating generally and impartially. . . . A law which thus invests any board or body of officials with a discretion which is purely arbitrary and which may be exercised in the interest of a favored few, is invalid. . . . The board is thus authorized to confer a privilege upon one person, firm, or corporation, and to deny the same privilege to and other person, firm, or corporation, and is not required to be governed, in so doing, by any fixed rules or regulations, but may be moved thereto only by its own caprice or favoritism. Laws thus conferring discretionary and arbitrary power upon statutory officials are not only invalid for the reasons already stated, but amount, in effect, to a delegation by the legislature of its legislative functions to the board or officials in question."
>
> Id. 618.

In *Schiller Piano Co. vs. Ill. Northern Utilities Co., supra,* the Court says:

"The measure of reasonableness of a police regulation is not necessarily what is best, but what is fairly appropriate under all the circumstances. Legislation in the exercise of the police power must have relation to and be appropriate for the protection, preservation, and promotion of the public health, safety, morals, or welfare. An act which has no tendency to affect or endanger the public in any of those particulars, and which is entirely innocent in character, is not within the police power. These general principles are universally recognized, and will be found discussed and numerous authorities referred to in 6 R. C. L. 193 et seq. Under the police power, the state has authority to enact legislation to regulate the charges and business of a public utility corporation; but if such legislation operates as a confiscation of private property, or constitutes an arbitrary or unreasonable infringement on personal or property rights, it will be held void, as in violation of the constitutional guaranty that no person shall be deprived of his property without due process of law."

11 A. L. R. 458.

While we admit that police power is inherent in the state, we believe that it is no more an inherent power of the state than is the right of self-defense in the individual; yet, if I use my right of self-defense before it is reasonably necessary, I become a trespasser.

THE TWO LAWS.

The two laws called in the briefs the "old law" and the "new law", are referred to as having the same purpose; but the effect of the new law, whatever its purpose, is to deprive the appellees of natural and vested rights. Its effect can be ascertained by the simple process of subtraction, and when we take the old law from the new, we find this difference to be the abolition of private and parochial schools, and vested rights.

No reason has been shown for the reclaiming of the rights and privileges of these appellees. It cannot be justified by the theory of the appellant as expressed in its brief in the Court below that "Our nation supports the public schools for the sole purpose of self-preservation".

Upon that theory, the state would be organized for its own sole existence, but the Declaration of Independence proclaims that governments are instituted to protect men in the very rights which this objectionable law destroys.

Just why the appellant should profess espousal of the cause of Religious Liberty is not clear, unless it be to disavow the plain tendency of this law to abolish such freedom.

The consequences of the law are plainly visible in the principle which leavens it; and as "a little leaven leaveneth the whole lump." Where would this movement end, unchecked, and what individual right is safe?

Much has been said about the state as *parens patriae*, but *parens patriae* may not step into the family circle as a supplanter while the parents perform their natural duties in the exercise of their natural rights.

This is the same old contest of the ages between prince and people, governors and governed, majorities and minorities,—the encroachment of misguided power upon natural and inalienable rights; and to this tendency of power we owe every defense erected across its path, as the Magna Charta, the Declaration of Independence, the Constitution of the United States, and, finally the Supreme Court, and these, one and all, have said, "Thus far, and no farther."

Respectfully submitted,

WM. A. WILLIAMS.
Attorney at Law

Supreme Court of the United States

OCTOBER TERM, 1924.

WALTER M. PIERCE, as Governor of the State of Oregon, ISAAC H. VAN WINKLE, as Attorney General of the State of Oregon, and STANLEY MYERS, as District Attorney for Multnomah County, State of Oregon, Appellants, *v.* THE SOCIETY OF THE SISTERS OF THE HOLY NAME OF JESUS AND MARY.	No. 583.

BRIEF AMICI CURIAE ON BEHALF OF THE DOMESTIC AND FOREIGN MISSIONARY SOCIETY OF THE PROTESTANT EPISCOPAL CHURCH.

Statement of Facts.

The Domestic and Foreign Missionary Society of the Protestant Episcopal Church in the United States of America, on whose behalf this brief is submitted, was instituted in the year 1820, was fully organized by the General Convention of said Church in the year 1835, and was duly incorporated by special act of the Legislature of the State of New York in the year 1846. It was instituted and incorporated for the purpose of conducting

general missionary operations in all lands, and for more than a century has been steadfastly pursuing such purpose. Its membership is deemed to embrace all the members of said Church, and now numbers over two million. In addition to its membership innumerable other citizens throughout the United States are in sympathetic accord with its purposes and cooperate with it in the furtherance of its work. It holds in sacred trust large sums of money and other property given both by the living and the dead for the accomplishment of its purposes in the United States and in foreign lands, which it is administering in accordance with the wishes of the donors.

The multitude of members of the Society regard the present alarming increase in the criminality of the young as the necessary consequence of the exclusion of religious influences from the public schools of the nation. The Society conducts, as a part of its work, a department of religious education, through which it assists and cooperates with the teachers in private schools throughout the country in making religious training a part of the education of boys and girls. No attempt is here made to enumerate the many private schools throughout the country in which the influence of the Protestant Episcopal Church is exerted through religious training and the inculcation of Christian ideals, but reference is made to certain of them which are closely identified or affiliated with that communion and with which the contact of the membership and cooperation of this Society are most intimate and controlling.

Of this class of these schools, which numbers more than 100, in every section of the country, 75 reported an enrollment for the scholastic year

1924-5 of 10,065, including children under sixteen years of age and children who have not completed the eighth public school grade. These schools are therefore directly or indirectly vitally interested in the attempted amendment of Section 5259 of Oregon Laws, which is the subject of this suit. At least one of them, St. Helen's Hall, at Portland, Oregon, is directly affected by such attempted amendment. This school was founded in 1869 and is in charge of the Sisters of St. John the Baptist, a Society of women members of the Protestant Episcopal Church. Its present enrollment is about two hundred. If this attempt to amend the law is successful, this institution will be seriously injured. Its patronage will be limited; its income will be diminished; its property will be reduced in value; its teachers will be hindered in the pursuit of their chosen work, and many citizens of the State of Oregon, as well as citizens of other states, will be deprived of the privilege of giving their children the advantages of the religious and moral training which they themselves had in this school and have found from experience to be helpful in after life.

While the religious education and training in these schools are in accordance with doctrines of the Protestant Episcopal Church, their enrollment is by no means restricted to those affiliated with that communion, since 4,571 of the enrollment above given are affiliated with other churches or no churches or are unaccounted for.

These schools are too numerous to be individually mentioned, but among them are such institutions as Groton and St. Mark's, of Massachusetts; St. Paul's, of New Hampshire; Kent, Pomfret, The Rectory School and St. Margaret's, of Connecticut;

St. Agatha's, St. Agnes', St. Mary's and Trinity, of New York; St. Mary's and St. Bernard's, of New Jersey; Academy of the Protestant Episcopal Church, Pennsylvania; National Cathedral School and St. Alban's, of the District of Columbia; Woodberry Forest, Virginia Episcopal High School, St. Catherine's, Stuart Hall, St. Christopher's, and Chatham Episcopal Institute, of Virginia; St. Mary's, of North Carolina; Cathedral School, of Florida; Porter Military Academy, of South Carolina; St. Mary's and Sewanee Military Academy, of Tennessee; Harcourt Place, of Ohio; Grafton Hall, St. John's Military Academy, and Kemper Hall, of Wisconsin; St. Mary's and St. Alban's, of Illinois; All Saints', of South Dakota; Brownell Hall, of Nebraska; St. Katharine's, of Iowa; Shattuck, of Minnesota; College of the Sisters of Bethany, and St. John's Military Academy, Kansas; St. Mary's Hall and St. Mary's College, of Texas; Rowland Hall, of Utah; Harvard School, of California; St. Helen's, of Oregon; St. Margaret's, of Idaho; and St. Paul's, of Washington.

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Those who now administer the affairs of this Society feel that they have come upon a time fraught with great danger to the moral welfare of the people, and they feel the weight of a great responsibility. They feel that it is a time to exert to the fullest extent the strength of the Society in combatting the evil tendencies of our time. It was only the other day that the President of the United States, addressing a gathering of Christian workers in the City of Washington, said: "We have come upon a time which men often compare to the later generations of Roman history." That was the time in the history of Rome that the people began to mock their gods, and religion ceased to influence their conduct.

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> "How many people realize that the age of the average 'desperate' criminal that comes before the Circuit Court of General Sessions in New York is about seventeen years? The last printed report of the New York Board of Prisons shows that nineteen was the age at which the largest number of prisoners was admitted to the State prisons in 1919. This indicates that the age at which the vast majority began their criminal careers was about sixteen or seventeen, because it is of rare occurrence that a first offender is sent to a State prison. They land there usually after their third offense. Without doubt the most depressing and disheartening impression received in an intimate association with the administration of the criminal law is the youthful age of the offender. Day after day, with painful uniformity, the Court room is startled by the announcement that the prisoner at the bar is sixteen years old. And sixteen is the precise age which divides the juvenile delinquent from the criminal."

With unanimity thoughtful people attribute this weakening of the moral fiber of our time to the lack of religious and moral training, particularly in children. Again quoting Judge Talley of the Court of General Sessions of New York, whose words, by reason of his extraordinary opportunities to judge, have great weight:

> "A nation's destiny is not in its learning or the amount of information it acquires—it's in its character. The heart of culture is the culture of the heart. The only way to form character is through religion. Find me another

way and I'll accept it. The only system of education worthy of the name of system, much less education, is that one which literally and actually inculcates the eternal truths of morality, not only by teaching but by hour to hour example.

"It is not the immigrant who is swelling the ranks of our young criminals. The immigrant, trained in a religious school nine times out of ten, is law abiding. But his son and his daughter, privileged to attend our great schools, are the ones who come before me day after day.

"I am not speaking as a politician. I am speaking as an expert. I am not a theorist. The reason I dare speak is that every day, every hour, I am face to face with the real thing here, with the facts."

Judge Hoyt, of the Children's Court, New York City, has said:

"Most important of all is the question of its (the child's) religious training and its moral guidance. The opportunity must be given every child to learn of religious truths and to worship God. The form of the religion does not concern the authorities; that is a matter to be decided by its parents, its family and its ecclesiastical advisers; but it should be strengthened and confirmed in its chosen faith and encouraged to follow its precepts. If our experience in the Children's Court has proven one thing, it is—that religion is essential in the training of children and that no lasting good can be achieved when their spiritual development is neglected."

The honored Chief Justice of this Court, in a public address in New York in October, 1920, said:

"Education is an essential basis for successful popular government, and it is predicated on the assumption that with education men

> will make good citizens, will see clearly what the public interest is and will use their influence and vote and activities to promote that interest. But education alone, without the instilling of moral principle, and without the strengthening of that morality with religious spirit, may often prove to give to citizens a knowledge without the moral impulse to use it properly. Therefore, where freedom of religion prevails, where religion cannot be united by government with education, the burden upon the churches to make up for their lack is greater, and the danger from a failure of the churches is more threatening."

This noble expression is but the fitting to our time the spirit which animated the founders of the Republic. It was Washington, in his Farewell Address, who said:

> "Let us with caution indulge the supposition that morality can be maintained without religion. Whatever may be conceded to the influence of refined education on minds of peculiar structure, reason and experience both forbid us to expect that national morality can prevail in exclusion of religious principles. * * *
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> "Of all dispositions and habits which lead to political prosperity, religion and morality are indispensable supports. In vain would that man claim the tribute of patriotism who should labor to subvert these great pillars of human happiness."

In this connection it may be noted that M. Taine, the great French philosopher and lucid teacher of positiveness, did not dare rear his children according to his own philosophy, but had them instructed in moral duty by a Protestant pastor whom he esteemed.

Fully realizing the truth and wisdom expressed in the foregoing quotations, this Society, through its Department of Religious Education, is striving to revive in the soul of youth the virtues of self-control and obedience to authority, both human and divine. But this noble enterprise is seriously menaced by the attempted amendment to the Oregon School Law, not only because it directly affects the Society's membership and work in the State of Oregon but because in principle it is destructive of such work everywhere.

If this attempted amendment becomes the law, it is almost inevitable that similar attempts will be made in other states threatening the whole structure of religious education and morality. This Society will be hindered in the pursuit of its chartered purposes and many of its members will be deprived of the cherished privilege of serving God and their country by devoting their time and their means to the training of children in morality and virtue through the teachings of the Bible.

The membership of this Society, through its General Convention assembled in Portland, Oregon, on September 19th, 1922, adopted the following resolution:

> "WHEREAS, there has been introduced into the Congress of the United States a bill to regulate further the Public School system of the nation; and
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> "WHEREAS, legislation has also been attempted in different parts of the country, which, if successful, will have the effect of eliminating all schools under the direction of the Church, and all other private schools giving education through the elementary grades; and

"WHEREAS, we desire to express our approval of the Public School system in our land and our sympathy with all well considered efforts to develop and improve the public schools; and

"WHEREAS, we also believe that the English language should be the sole medium of instruction in all our public Schools; therefore, be it

"RESOLVED, the House of Bishops concurring, that the General Convention expresses its abiding conviction that instruction in religion is an essential element in all true education, and that Church Schools have an indispensable part in our educational system; and be it

"FURTHER RESOLVED, the House of Bishops concurring, that this General Convention goes on record as deprecating and opposing any and all movements seeking to secure legislation having as its natural result the injury and perhaps the destruction, of the Church schools of our land."

On November 7, 1924, this Society, through the National Council, acting as its board of directors, adopted the following resolution:

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The Law.

We have examined the brief for the appellee and fully concur in the arguments therein presented, and accept the citations therein as sustaining such arguments. We therefore do not undertake to repeat here the discussion of the law, relying upon the able presentation thereof in the brief for the appellee.

We therefore respectfully urge upon this Honorable Court the affirmance of the decree appealed from.

Respectfully submitted,

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Office and Post Office Address,
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Borough of Manhattan,
New York, N. Y.

CHARLES H. TUTTLE,
CHAS. E. HOTCHKISS,
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Supreme Court of the United States

OCTOBER TERM, 1924.

WALTER M. PIERCE, as Governor of the State of Oregon; ISAAC H. VAN WINKLE, as Attorney General of the State of Oregon, and STANLEY MYERS, as District Attorney for Multnomah County, State of Oregon, Appellants,	No. 584.
v.	
HILL MILITARY ACADEMY.	

BRIEF AMICI CURIAE ON BEHALF OF THE DOMESTIC AND FOREIGN MISSIONARY SOCIETY OF THE PROTESTANT EPISCOPAL CHURCH.

Statement of Facts.

The Domestic and Foreign Missionary Society of the Protestant Episcopal Church in the United States of America, on whose behalf this brief is submitted, was instituted in the year 1820, was fully organized by the General Convention of said Church in the year 1835, and was duly incorporated by special act of the Legislature of the State of New York in the year 1846. It was instituted and incorporated for the purpose of conducting

general missionary operations in all lands, and for more than a century has been steadfastly pursuing such purpose. Its membership is deemed to embrace all the members of said Church, and now numbers over two million. In addition to its membership innumerable other citizens throughout the United States are in sympathetic accord with its purposes and cooperate with it in the furtherance of its work. It holds in sacred trust large sums of money and other property given both by the living and the dead for the accomplishment of its purposes in the United States and in foreign lands, which it is administering in accordance with the wishes of the donors.

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1924-5 of 10,065, including children under sixteen years of age and children who have not completed the eighth public school grade. These schools are therefore directly or indirectly vitally interested in the attempted amendment of Section 5259 of Oregon Laws, which is the subject of this suit. At least one of them, St. Helen's Hall, at Portland, Oregon, is directly affected by such attempted amendment. This school was founded in 1869 and is in charge of the Sisters of St. John the Baptist, a Society of women members of the Protestant Episcopal Church. Its present enrollment is about two hundred. If this attempt to amend the law is successful, this institution will be seriously injured. Its patronage will be limited; its income will be diminished; its property will be reduced in value; its teachers will be hindered in the pursuit of their chosen work, and many citizens of the State of Oregon, as well as citizens of other states, will be deprived of the privilege of giving their children the advantages of the religious and moral training which they themselves had in this school and have found from experience to be helpful in after life.

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The Law.

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Respectfully submitted,

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PIERCE, GOVERNOR OF OREGON, ET AL. *v.* SOCIETY OF SISTERS.

PIERCE, GOVERNOR OF OREGON, ET AL. *v.* HILL MILITARY ACADEMY.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON.

Nos. 583, 584. Argued March 16, 17, 1925.—Decided June 1, 1925.

1. The fundamental theory of liberty upon which all governments of this Union rest excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only. P. 535.
2. The Oregon Compulsory Education Act (Oreg. Ls., § 5259) which, with certain exemptions, requires every parent, guardian or other person having control of a child between the ages of eight and sixteen years to send him to the public school in the district where he resides, for the period during which the school is held for the current year, is an unreasonable interference with the liberty of the parents and guardians to direct the upbringing of the children, and in that respect violates the Fourteenth Amendment. P. 534,
3. In a proper sense, it is true that corporations can not claim for themselves the liberty guaranteed by the Fourteenth Amendment, and, in general, no person in any business has such an interest in possible customers as to enable him to restrain exercise of proper power by the State upon the ground that he will be deprived of patronage;
4. But where corporations owning and conducting schools are threatened with destruction of their business and property through the improper and unconstitutional compulsion exercised by this statute upon parents and guardians, their interest is direct and immediate and entitles them to protection by injunction. *Truax* v. *Raich*, 239 U. S. 33. P. 535.
5. The Act, being intended to have general application, can not be construed in its application to such corporations as an exercise of power to amend their charters. *Berea College* v. *Kentucky*, 211 U. S. 45. P. 535.
6. Where the injury threatened by an unconstitutional statute is present and real before the statute is to be effective, and will

become irreparable if relief be postponed to that time, a suit to restrain future enforcement of the statute is not premature. P. 536.

296 Fed. 928, affirmed.

APPEALS from decrees of the District Court granting preliminary injunctions restraining the Governor, and other officials, of the State of Oregon from threatening or attempting to enforce an amendment to the school law,—an initiative measure adopted by the people November 7, 1922, to become effective in 1926—requiring parents and others having control of young children to send them to the primary schools of the State. The plaintiffs were two Oregon corporations, owning and conducting schools.

Mr. Willis S. Moore, Assistant Attorney General of Oregon, with whom *Mr. I. H. Van Winkle*, Attorney General, was on the brief, for appellant Van Winkle.

The Fourteenth Amendment does not remove or restrict the power of the State to enact laws necessary to promote the health, safety, peace, morals, education or general welfare of its people. *Munn* v. *People of Illinois*, 94 U. S. 278; *Boston Beer Co.* v. *Massachusetts*, 97 U. S. 25; *Barbier* v. *Connolly*, 113 U. S. 27, 31; *Mugler* v. *Kansas*, 123 U. S. 623, 666; *Powell* v. *Pennsylvania*, 127 U. S. 678; *Re Kemmler*, 136 U. S. 436, 449; *Crowley* v. *Christensen*, 137 U. S. 86; *Jones* v. *Brim*, 165 U. S. 180, 182; *Jacobson* v. *Massachusetts*, 197 U. S. 11; *Interstate Consol. Street R. Co.* v. *Massachusetts*, 207 U. S. 79; *McLean* v. *Arkansas*, 211 U. S. 539; *Middleton* v. *Texas Power & L. Co.*, 249 U. S. 152; *N. O. Gas Light Co.* v. *Louisiana Light, etc., Mfg. Co.*, 115 U. S. 650; *Slaughter House Cases*, 16 Wall. 22; *Stone* v. *Mississippi*, 101 U. S. 814; *Sanitary District of Chicago* v. *United States*, 266 U. S. 405.

The provisions of a corporation charter and of any law pursuant to which a corporation may have entered into

valid contracts, are subject to modification and annulment under the police power. *Boston Beer Co.* v. *Massachusetts, supra; Stone* v. *Mississippi, supra; The Mayor, etc.* v. *Miln*, 11 Pet. 102; *Eagle Insurance Co.* v. *Ohio*, 153 U. S. 449; *Chicago B. & Q. Co.* v. *Nebraska*, 170 U. S. 59; *Pacific Gas & E. Co.* v. *Police Court*, 251 U. S. 22; *Thornton* v. *Duffy*, 254 U. S. 361; *Chicago L. Ins. Co.* v. *Needles*, 113 U. S. 574.

As to minors, the State stands in the position of *parens patriae* and may exercise unlimited supervision and control over their contracts, occupation and conduct, and the liberty and right of those who assume to deal with them. *State* v. *Shorey*, 48 Ore. 396; *Stettler* v. *O'Hara*, 69 Ore. 519; *State* v. *Bunting*, 71 Ore. 259; *Gibbons* v. *Gibbons*, 75 Ore. 500; *Merges* v. *Merges*, 94 Ore. 246; *State* v. *Bailey*, 157 Ind. 324; *Sturges & Burn Mfg. Co.* v. *Beauchamp*, 231 U. S. 320; *Muller* v. *Oregon*, 208 U. S. 412; *Starnes* v. *Albion Mfg. Co.* 147 N. C. 566; *People* v. *Ewer*, 141 N. Y. 129; *Berea College* v. *Commonwealth*, 123 Ky. 209; *State* v. *Jackson*, 71 N. H. 552; *Commonwealth* v. *Roberts*, 159 Mass. 372; *State* v. *Counort*, 69 Wash. 321; *Meyer* v. *Nebraska*, 262 U. S. 390; *In re Turner*, 49 Kan. 115; *Vanwalters* v. *Board of Children's Guardians*, 132 Ind. 567; *State* v. *Rose*, 125 La. 462; *Ex parte Powell*, 6 Okla. Cr. Pr. 495; *Egoff* v. *Board of Children's Guardians*, 170 Ind. 238; *United States* v. *Behrendsohn*, 197 Fed. 953; *Interstate Company* v. *Massachusetts*, 207 U. S. 79.

The statute does not interfere with religious liberty. *Permoli* v. *New Orleans*, 3 How. 589; *Brunswick Co.* v. *Evans*, 228 Fed. 991; *People* v. *Board of Education*, 245 Ill. 335; *Swafford* v. *Keaton*, 23 Ga. App. 238; *State* v. *Mockus*, 113 Atl. 39 (Me.); *Reynolds* v. *United States*, 98 U. S. 145; *Commonwealth* v. *Herr*, 229 Pa. St. 132; *Owens* v. *State*, 6 Okla. Cr. 110; *People* v. *Pierson*, 176 N. Y. 201; *Scales* v. *State*, 47 Ark. 476; *Commonwealth*

v. *Has*, 122 Mass. 40; *Philips* v. *Gratz*, 2 Pen. & W. 412; *Wilkes-Barre* v. *Garabed*, 11 Pa. Super. 355; *Smith* v. *People*, 51 Colo. 270.

The American people as a whole have unalterably determined that there shall be an absolute and unequivocal separation of church and state, and that the public schools shall be maintained and conducted free from influences in favor of any religious organization, sect, creed or belief. Art. I, Const. U. S.; Art. I, § 5, Oregon Const.; Art. VIII, § 3, *Id.*; *Knowlton* v. *Baumhover*, 182 Iowa 691; *Wilkerson* v. *Rome*, 152 Ga. 762; *Evans* v. *Selma Union High School District* (Cal., 1924), 222 Pac. 801; *Donahoe* v. *Richards*, 38 Me. 379.

The provisions of subdivision " d " of the act conferring upon county superintendents power to determine that a child is not being properly taught and to order him sent to a public school, do not invalidate the measure, but relate to a proper exercise of administrative power. The fact that the amendment to § 5259, Oregon Laws, contains new provisions in conflict with a succeeding section of the act, which was not amended, does not invalidate the amendment.

Mr. William D. Guthrie, with whom *Mr. Bernard Hershkopf* was on the brief, for appellee in No. 583.

This bill establishes a case of irreparable injury imminent to the appellee's business and property. *International News Service* v. *Associated Press*, 248 U. S. 215, 236; *Springhead Spinning Co.* v. *Riley*, L. R. 6 Eq. 551, 558; *Vicksburg Waterworks Co.* v. *Vicksburg*, 185 U. S. 65, 82; *Terrace* v. *Thompson*, 263 U. S. 197; *Walla Walla* v. *Walla Walla Water Co.*, 172 U. S. 1; *School of Magnetic Healing* v. *McAnnulty*, 187 U. S. 94; *Kennington* v. *Palmer*, 255 U. S. 100.

Courts of the United States have jurisdiction because a federal constitutional right of the plaintiff-appellee was

invaded by the enactment in question. If the liberty of parents be unconstitutionally impaired by the enactment in suit, surely it must needs follow, by the same token and with irresistible logic, that the constitutional rights of the appellee are likewise directly and unconstitutionally abridged. *Truax* v. *Raich*, 239 U. S. 33, 38; *Nebraska District* v. *McKelvie*, 262 U. S. 404; *Terrace* v. *Thompson*, 263 U. S. 197, 215–6; *Packard* v. *Banton*, 264 U. S. 140, 143.

The enactment in suit is not a legitimate exercise of the police power of the State. The courts are entrusted with authority, and it becomes their solemn duty, to review the reasonableness and propriety of any attempted use of that power. *Child Labor Tax Case*, 259 U. S. 20, 37. This Court, like the court below, must know that the true purpose of the act, as well as its plain and intended practical effect, was the destruction of private primary, preparatory and parochial schools; for they certainly could not survive the denial of the right of parents to have their children thus educated in the primary grades. Such drastic and extraordinary legislation is a portentous innovation in America. Private and religious schools have existed in this country from the earliest times. Indeed, the public or common school, as we know it today, dates only from 1840. For generations all Americans—including those who fought for liberty and independence in the eighteenth century, and who drafted the Declaration of Independence, the Northwest Ordinance of 1787, and the Constitution of the United States—were educated in private or religious schools, and mostly the latter. Perhaps no institution is older or a more intimate part of our colonial and national life than religious schools and colleges, both Catholic and Protestant. The private and religious schools have been the laboratories in which educational methods have been worked out and pedagogic progress accomplished from

the very beginning of our history. Out of them have developed, or to them is due, our greatest colleges and universities, the most important of them to this day being private or religious institutions. In more recent times commonwealth colleges and universities have grown up. The legislation before the court manifestly carries within itself a threat, not merely to the private elementary and preparatory schools which it now practically proscribes, but to every private or religious preparatory school and every private or religious college or university in the land. The statute in suit is so unusual and extraordinary that it must arouse misgivings in the judicial mind upon even the slightest reflection. More than ever must it be borne in mind in judging it, as pointed out by the Chief Justice in *Wolff Co.* v. *Industrial Court*, 262 U. S. 522, 534, that "restraints must not be arbitrary or unreasonable. Freedom is the general rule, and restraint the exception."

The statute abridges the freedom of four classes closely interrelated: (1) the freedom of the private and parochial schools, (2) the freedom of teachers engaged in those schools, (3) the freedom of parents and guardians, and (4) the freedom of children. There is nothing in the record which warrants even the suggestion that private and parochial schools in Oregon are in any respect inferior to the public schools. If, however, the contrary were the fact, the case would still be no different; for there would still not exist any valid reason for their total suppression. The State of Oregon has regulatory power adequate to every reasonable and proper need in this relation. Indeed, it has largely exercised it as its statutes demonstrate.

In the brief submitted on behalf of the appellant Governor, it is urged in justification for the enactment that it was necessary in order to prevent the teaching of disloyalty and subversive radicalism or bolshevism. Assuming, therefore, but only for the purposes of the argu-

ment, that there may be in fact such an evil as this appellant conjures up and that it is not a mere chimera, nevertheless, there is no reasonable necessity for any such prohibitory law as is now under discussion. This Court has emphatically held that the States have power to make criminal and forbid the teaching of disloyalty, sedition, or pacifism. *Gilbert* v. *Minnesota,* 254 U. S. 325. It has also declared "that this court and other courts have decided that a license or certificate may be required of a . . . school teacher." *Lehmann* v. *Board of Accountancy,* 263 U. S. 394, 398; *People* v. *American Socialist Society,* 202 N. Y. App. Div. 640.

Where regulation is so completely adequate, prohibition is unnecessary and constitutes mere arbitrariness and wanton abuse of power. Particularly must this be true, where the subject of the alleged prohibition is an ordinary, innocuous and useful calling, trade, or business. However the matter may stand as to nuisances and businesses tainted with vicious qualities, tendencies, or effects, there is no doubt that this Court has repeatedly and authoritatively refused to countenance destruction of honest and ordinary businesses charged with abuses which were readily remediable by regulation. *Adams* v. *Tanner,* 244 U. S. 590; *Meyer* v. *Nebraska,* 262 U. S. 390; *Nebraska District of Evangelical Lutheran Synod* v. *McKelvie,* Id. 404, 410. See *Hamilton* v. *Vaughn,* 179 N. W. 553, 558 (Mich.); *Columbia Trust Co.* v. *Lincoln Institute,* 138 Ky. 804, 812–4.

That the assimilation of the foreigner is not a justification for any such prohibitory statute, was expressly decided in *Meyer* v. *Nebraska,* 262 U. S. 390, 402. But the fact is, that the whole contention is fallacious and merely a far-fetched extravagance or pretense. Oregon has no substantial unnaturalized immigrant problem. Eighty-five per cent of its population is native-born. Half of the remainder is naturalized and presumably Americanized.

Of the children of the seven and a half per cent. unnaturalized, only a small number attend private schools. The children of poor, ignorant foreigners do not attend private schools where tuition must be paid for; they generally go to the free public schools. The public school is not a "melting pot." Schools are, and obviously must be, located in given districts. If the neighborhood be American, the school there will have a similar character. If, however, it be situated in a poor and foreign quarter, the school will be attended almost entirely by children of the poorer class of foreigners. The child of a foreigner is quite as likely to be assimilated and Americanized in a private or parochial school as in a public school. But there was no claim that as a matter of fact and truth American history and the aims of our Governments were not being correctly taught in the private and parochial schools of the State, nor was there any suggestion that the children attending such schools were not being properly or adequately instructed in any fundamental principles of freedom and democracy or in reverence and righteousness. The private and parochial schools teach the same subjects as the public schools—whatever one does to inculcate and foster patriotism, the other can and does do quite as well.

No legislation can proscribe social discrimination, and the statute in the case at bar is singularly inappropriate to that end. Young children do not discriminate against each other; that is a characteristic of maturity. The picking and choosing of friends for reasons based upon money, creed, or social status come, not during elementary school days, but afterwards; and no force thus far vouchsafed to man has ever been equal to the destruction or elimination of social distinctions. How the act in suit could accomplish that result, no one can tell; and, as a reason for annihilating the appellee's useful and honorable business, it amounts to nothing. It is now intimated

that the statute was necessary in order to effectuate compulsory education. But the suggestion is clearly based upon false premises. The notion that private and public schools cannot exist in peace and harmony side by side, which underlies the act in suit, is not only contradicted by long experience, but is probably held by no competent educator.

Thus far we have considered the enactment in suit only in reference to the rights of the private and parochial schools and the teachers they employ. But there is involved in the case at bar a far more important group of individual rights, namely, the rights of the parents and guardians who desire to send their children to such schools, and the rights of the children themselves. Reflection should soon convince the court that those rights, which the statute seriously abridges and impairs, are of the very essence of personal liberty and freedom. *Tillman* v. *Tillman*, 26 L. R. A. (n. s.) 781, 785 (S. Car.). In this day and under our civilization, the child of man is his parent's child and not the State's. "Take away from the parents all care and concern for their children's education, and you make a social life an impossible and unintelligible notion." Pufendorf's Law of Nature and Nations, book VI, c. II, § 4. It need, therefore, not excite our wonder that to-day no country holds parenthood in so slight esteem as did Plato or the Spartans—except Soviet Russia.

It is not seriously debatable that the parental right to guide one's child intellectually and religiously is a most substantial part of the liberty and freedom of the parent. *Meyer* v. *Nebraska*, 262 U. S. 390, 399–400; *Taylor* v. *Beckham (No. 1)*, 178 U. S. 548, 602–3. See also *Wolff Co.* v. *Industrial Court*, 262 U. S. 522, 534; *Coppage* v. *Kansas*, 236 U. S. 1, 10, 14; *Smith* v. *Texas*, 233 U. S. 630, 636; *People* v. *Gillson*, 109 N. Y. 389, 398–9; *Tillman* v. *Tillman*, 26 L. R. A. (n. s.) 781, 785 (S. Car.).

The statute in suit trespasses, not only upon the liberty of the parents individually, but upon their liberty collectively as well. It forbids them, as a body, to support private and parochial schools and thus give to their children such education and religious training as the parents may see fit, subject to the valid regulations of the State. In that respect the enactment violates the public policy of the State of Oregon and the liberty which parents have heretofore enjoyed in that State. *Liggett* v. *Ladd,* 17 Ore. 89, 94. See also *Milwaukee Industrial School* v. *Superiors,* 40 Wis. 328, 332; *People* v. *Turner,* 55 Ill. 280; *State ex rel. Sheibley* v. *School District,* 31 Neb. 552, 556; *Trustees* v. *People,* 87 Ill. 303. In whatever light the act in suit be regarded, it must be manifest that, in the end, it embodies the pernicious policy of state monopoly of education.

The legislative power of a State in relation to education does not involve the power to prohibit or suppress private schools and colleges. The familiar statement that education is a public function means no more than that it is a function that the State may undertake, because it vitally interests and concerns the State that children shall be furnished the means of education and not left to grow up in ignorance. But the power of the State to provide public schools carries with it no power to prohibit and suppress private schools and colleges which are competent and qualified to afford what the State wants, namely, education. Thus, there is no question as to the power of the State to construct and operate public roads, bridges and other means of transportation; yet it would hardly be seriously contended that the State might under the police power forbid the further operation of all private highways, bridges and railroads. Whenever the State desires the use of any such existing facilities for some distinctly public purpose, it can take them only by the exercise of the power of eminent domain. *Los Angeles*

v. *Los Angeles Gas & Electric Corporation*, 251 U. S. 32, 38; *Green* v. *Frazier*, 253 U. S. 233; *Adams* v. *Tanner*, 244 U. S. 590.

The present case is wholly outside the principle that, where a State may enter upon an undertaking which can be conducted profitably and satisfactorily only as a monopoly, it may prevent competition or the continued use of competing facilities by condemning and destroying property under the power of eminent domain and just compensation. In its essence, the Oregon law is one strangling scientific investigation in private laboratories. The social interests menaced by the suppression of private educational institutions and the denial of liberty to pursue long rooted habits and traditions among our people are peculiarly of the character that the Fourteenth Amendment was most immediately designed to protect from state political action. *Laurel Hill Cemetery* v. *San Francisco*, 216 U. S. 358, 366. The Fourteenth Amendment had for its primary object the prevention of state legislation calculated to keep one class in subjection to another in respect of opportunities for economic and social advancement, the pursuit of happiness, and the exercise of fundamental rights comprehended in an essential individual liberty, among men fit for freedom. *Buchanan* v. *Warley*, 245 U. S. 60; *Meyer* v. *Nebraska*, 262 U. S. 390; *Bartels* v. *Iowa*, 262 U. S. 404.

The statute impairs the obligation of the contract embodied in the appellee's corporate charter. *Dartmouth College case*, 4 Wheat. 518. The corporation laws under which the appellee exists as a corporation (Deady's Code, 1886, pp. 632–4, as amended by General Laws of Oregon for 1903, pp. 176–7) do not contain any provision empowering the State to alter, amend, or repeal the charter; and the constitutional provision which was in force in Oregon when the appellee was organized (§ 2, Art. XI), while permitting the corporation laws of the State to be

altered, amended, or repealed, nevertheless, expressly limited that power by providing that it was not to be exercised " so as to impair or destroy any vested corporate rights." In *Liggett* v. *Ladd,* 17 Ore. 89; *Lornsten* v. *Union Fishermen's Co.,* 71 Ore. 540, it was held that a corporation had a vested right to its corporate name which subsequent legislation could not impair. If that be so, *a fortiori* the right granted to the plaintiff-appellee upon its incorporation to maintain and conduct schools for pay, is likewise a vested right within the meaning of the Oregon constitutional provision above referred to; and, as such, may not be impaired or destroyed by the legislature. The enactment in suit is, consequently, void, not only because of this provision of the Oregon constitution, but also because it impairs the obligation of a contract in violation of section 10 of Article I of the Constitution of the United States. *Berea College* v. *Kentucky,* 211 U. S. 45, distinguished.

Mr. J. P. Kavanaugh, with whom *Messrs. Jay Bowerman, Dan J. Malarkey, Hall S. Lusk, E. B. Seabrook* and *F. J. Lonergan* were on the brief, for appellee in No. 583.

Messrs. George E. Chamberlain and *Albert H. Putney,* with whom *Mr. P. Q. Nyce* was on the brief, for the Governor of Oregon.

The assertion that this law impairs the obligation of contracts is clearly disposed of by *Berea College* v. *Kentucky,* 211 U. S. 45. A State cannot contract away any of its fundamental governmental powers.

It is now definitely settled that the Fourteenth Amendment did not radically alter the relations between the federal and state governments, or make the provisions of the Bill of Rights in the United States Constitution binding upon the state governments.

The charge that the statute violates the privileges and immunities of citizens of the United States is hardly

worthy of serious consideration. *Slaughter House Cases*, 16 Wall. 36; *Twining* v. *New Jersey*, 211 U. S. 78; *Hodges* v. *United States*, 203 U. S. 1; *Hudson County Water Co.* v. *McCarter*, 209 U. S. 349; *Corfield* v. *Coryell*, 4 Wash. 371; *Eadleigh* v. *Newhall*, 136 Fed. 941.

The statute does not deprive anyone of property without due process of law. *Mugler* v. *Kansas*, 123 U. S. 623; *Kidd* v. *Pearson*, 128 U. S. 1; *Clark Distilling Co.* v. *Western Maryland R. Co.*, 242 U. S. 311; *Crane* v. *Campbell*, 245 U. S. 304. The principle of the non-liability of government for loss to business incidentally resulting from state legislation is not confined to business similar to the liquor traffic. *Madera Waterworks* v. *City of Madera*, 228 U. S. 454; *Hadacheck* v. *Sebastian*, 239 U. S. 394; *Tanner* v. *Little*, 240 U. S. 369; *Hebe Company* v. *Shaw*, 248 U. S. 297; *Purity Extract and Tonic Co.* v. *Lynch*, 226 U. S. 192.

Cases in which this Court has protected the right to labor, are not precedents in this case. There is a great distinction between the right to work and the right to have a private business protected as against public competition or the exercise of the police powers of the State.

In *Terrace* v. *Thompson*, 264 U. S. 197, it was held that "The quality and allegiance of those who own, occupy and use the farm lands within its borders are matters of highest importance and affect the safety and power of the State itself." Is "the safety and power of the State" less effected by the control of education than by the control of farm lands?

This Court has never held that there was a denial of due process of law where a private business was injured or even destroyed by state competition in a field in which a State might lawfully engage. If a State may engage at all in any field, the question of the effect of state competition upon private business is immaterial. The owners of private schools have even less basis for the claim that

their property is taken without due process of law through the enactment of a compulsory education law than the owners of property used for saloon purposes had when their business was interfered with by a state prohibition law. In the latter case the entire use of the property for the purpose for which it was intended was prohibited; in the former case the school is only deprived of certain prospective students. A private school might still be continued for students under or over the age limits set by the law. A properly qualified teacher in a private school might easily secure a position as one of the additional teachers who would be required by the public schools. No person in any business has such an interest in possible customers as to enable him to restrain the government from exercising any proper power because it might deprive him of such patronage. To state such a contention is to show its absurdity.

The case of the Hill Military Academy is no stronger under the law, than would have been the case of a merchant who had attempted to restrain the operation of the draft act, during the recent war, on the ground that the Government, by taking away certain of his customers, was depriving him of his property without due process of law. See *Munn* v. *Illinois*, 94 U. S. 113.

The Oregon law does not deprive any person of liberty without due process of law. The appellees are corporations. The liberty protected by the Fourteenth Amendment is that of natural, and not of artificial, persons. *Northwestern Nat. L. Ins. Co.* v. *Riggs*, 203 U. S. 243, 255; *Western Turf Ass'n.* v. *Greenberg*, 204 U. S. 359, 363. Nor can the appellees claim to have any such interests in the liberties of the school children of the State, or their parents. No person has the right to test the constitutionality of a law merely because it may affect the liberty of another person in whom he has no recognized legal interest. *Gusman* v. *Marrero*, 180 U. S. 81. *Truax* v. *Raich*, 239 U. S. 33, distinguished.

No claim can arise that the school children themselves are deprived, by this law, of liberty without due process of law. It will be admitted by all that children under sixteen years of age cannot be given liberty of choice as to their education; this must be under the control either of the State, or of their parents, or of both the State and their parents. If any persons have been deprived of liberty without due process of law it is the parents of the school children. The determination of this last point brings us to the question of the respective authority of the State and of parents over minor children.

Even in the freest country no person can possess absolutely uncontrolled liberty, either with respect to himself personally, or to his children. A parent cannot have a more complete right of control over the actions of his child than over his own actions. Liberty of all is subject to reasonable conditions deemed essential by the governing body to the safety, health, peace, good order and morals of the community. *Crawley* v. *Christensen,* 137 U. S. 86; *Jacobson* v. *Massachusetts,* 197 U. S. 11.

Under all governments, even those which are the most free and democratic in their character, the citizen must always owe duties to the State; and it necessarily follows that the State has an interest in making it certain (which can only be done by appropriate legislation) that the citizen is fitted, both in mind and body, to perform these duties. *Jacobson* v. *Massachusetts, supra.* The discretionary powers of a State are broad enough to permit it to decide that compulsory attendance at public schools is a proper "precautionary measure against the moral pestilence of paupers, vagabonds, and possibly convicts." *Mayor, etc. of New York* v. *Miln,* 11 Pet. 102.

The voters of Oregon who adopted this law had the right to act on the belief that the fact that the great increase in juvenile crime in the United States followed so closely after the great increase in the number of chil-

dren in the United States who were not attending public schools, was more than a coincidence. The voters in Oregon might also have based their action in adopting this law upon the alarm which they felt at the rising tide of religious suspicions in this country, and upon their belief that the basic cause of such religious feelings was the separation of children along religious lines during the most susceptible years of their lives, with the inevitable awakening of a consciousness of separation, and a distrust and suspicion of those from whom they were so carefully guarded. The voters of Oregon might have felt that the mingling together, during a portion of their education, of the children of all races and sects, might be the best safeguard against future internal dissentions and consequent weakening of the community against foreign dangers.

In *Mayor, etc. of New York* v. *Miln, supra,* this Court was considering the evil effects upon a State of the immigration of ignorant foreigners, unacquainted with, and lacking sympathy with, American institutions and ideals. In this connection, it should be remembered that the vast majority of children not now attending the public schools of Oregon who will be compelled to do so by the new statute, are either themselves immigrants or the children of immigrants. Surely a State can require of all immigrants admitted to the advantages and opportunities of life in the United States, that their children shall be taught by the State the English language, and the character of American institutions and government. *Meyer* v. *Nebraska,* 262 U. S. 390, distinguished.

The compulsory attendance of all children of school age at the public schools during the relatively short hours during which these schools are in session would not deprive the parents of any just rights. There would remain an abundance of time and opportunity for supplementary instruction either in religion or in the language, history, and traditions of the land of their ancestors. The ob-

jectionable feature about the Nebraska law was that it forbade the teaching of modern languages either in regular schools or in supplementary schools. The dicta in the *Meyer Case* would appear to be somewhat broader than can be supported by the previous decisions of this Court which are cited to support it.

The subject of immigration is one which is exclusively under the control of the Central Government. The States have nothing to say as to the number or class of the immigrants who may be permitted to settle within their limits. It would therefore appear to be both unjust and unreasonable to prevent them from taking the steps which each may deem necessary and proper for Americanizing its new immigrants and developing them into patriotic and law-abiding citizens. At present, the vast majority of the private schools in the country are conducted by members of some particular religious belief. They may be followed, however, by those organized and controlled by believers in certain economic doctrines entirely destructive of the fundamentals of our government. Can it be contended that there is no way in which a State can prevent the entire education of a considerable portion of its future citizens being controlled and conducted by bolshevists, syndicalists and communists?

The exact question involved in the present case has never been passed upon by any American court. Perhaps the cases which come nearest are those on whether the school authorities have the right to exclusive control over the list of studies to be taken by pupils in the public schools, or whether the parents have a limited right of selection. The decisions on this question are in hopeless conflict. In New Hampshire (*Kidder* v. *Chelis*, 59 N. H. 473) Indiana (*State* v. *Webber*, 108 Ind. 31,) and Iowa (*State* v. *Mizner*, 50 Ia. 145,) the power of the public is held exclusive; while in Illinois (*School Trustees* v. *People*, 87 Ill. 303,) Oklahoma (*School Board District* v.

Thompson, 24 Okla. 1,) and Wisconsin (*Morrow* v. *Wood*, 35 Wis. 59,) some right of control has been held to belong to the parent. This Court has twice recently, in the child labor cases, (*Hammer* v. *Dagenhart*, 247 U. S. 251, and *Bailey* v. *Drexel Furniture Co.*, 259 U. S. 20,) held that all questions relative to the care, control and custody of minor children belong exclusively to the State.

The Oregon law does not deny the equal protection of the law. The whole opposition arises from the fact that it is intended to bring about a greater equality in the operation of the school law of Oregon than has previously existed. A law which increases the uniformity of the application of a law cannot by any stretch of the imagination be classed as a law which denies the equal protection of the law. The new Oregon School Law merely removes an exception to the generality of the application of the former law. The right to the equal protection of the laws is not denied when it is apparent that the same law or course of procedure is applicable to every other person in the State under similar circumstances and conditions. *Walston* v. *Nevin*, 128 U. S. 582; *Tinsley* v. *Anderson*, 171 U. S. 106; *Williams* v. *Arkansas*, 217 U. S. 79.

If the compulsory school laws of the other States are constitutional, this law must be held so. If a State may pass a law applying to a certain portion of the things or persons included in a general class, it can pass one applying to all in a general class, unless express exceptions are to be found in the prohibitions in the Federal Constitution. *Fisher* v. *St. Louis*, 194 U. S. 361. The constitutionality of the Oregon law can be sustained as an exercise of the police power of the State. The scope of this power is very broad. *Chicago, B. & Q. R. Co.* v. *Illinois*, 200 U. S. 561; *Bacon* v. *Walker*, 204 U. S. 311; *Mayor, etc. of New York* v. *Miln*, 11 Pet. 102. This law may also be sustained under the powers of the State in connection with its duties to aid the United States in time of war. *Arver* v. *United States*, 245 U. S. 366; *Holdman* v. *United States*, 245 U. S.

474; *Ruthenberg* v. *United States*, 245 U. S. 480; *Cox* v. *Wood*, 247 U. S. 3; *Frohwerk* v. *United States*, 249 U. S. 204; *Debs* v. *United States*, 249 U. S. 211; *McKinley* v. *United States*, 249 U. S. 397. The power and duty to be prepared for war is shared by the state government. *Gilbert* v. *Minnesota*, 254 U. S. 325; *Halter* v. *Nebraska*, 205 U. S. 34.

The discretion of the States in the exercise of their powers is broad enough to justify a State in holding that a compulsory system of public school education will encourage the patriotism of its citizens, and train its younger citizens to become more willing and more efficient defenders of the United States in times of public danger. This is particularly true in view of the fact that if the Oregon School Law is declared unconstitutional there will be nothing to prevent the establishment of private schools, the main purpose of which will be to teach disloyalty to the United States, or at least the theory of the moral duty to refuse to aid the United States even in the case of a defensive war. If a State cannot compel certain children to attend the public schools it cannot compel any children to do so. An attempt to do so would be clearly a violation of the "equal protection of the laws" clause of the Fourteenth Amendment.

Mr. John C. Veatch, for appellee in No. 584.

Any restrictions upon the rights of the individual are arbitrary and oppressive unless intended to promote the public welfare and having a reasonable relation to that purpose. *Purity Extract Co.* v. *Lynch*, 226 U. S. 192; *McLean* v. *Arkansas*, 211 U. S. 539. Where the legislative action is arbitrary and has no reasonable relation to a purpose which it is competent for the Government to effect, the legislature transcends the limits of its power in interfering with the liberty of contract. *C. B. & Q. R. R. Co.* v. *McGuire*, 219 U. S. 549; *Atlantic Coast Line* v. *Goldboro*, 232 U. S. 559; *House* v. *Mayes*, 219 U. S. 270; *Reduction Company* v. *Sanitary Works*, 199 U. S.

306; *C. B. & Q. R. R. Co.* v. *Drainage Commissioners,* 200 U. S. 561; *Lochner* v. *New York,* 198 U. S. 45. If it is within the power of the State to take away the business of the private schools in the elementary grades, it is equally within that power to take away their business in all grades. *Adams* v. *Tanner,* 244 U. S. 590.

This act is not designed and intended to promote compulsory education. It adds nothing to the standard of education, it does not broaden the educational field; the changing of the ages for compulsory school attendance is in no way affected by the clause relating to private schools. *Commonwealth* v. *Roberts,* 159 Mass. 372.

While no rule of law defines the limits of the State's power, the principle, based upon the universal decisions of the courts, is that the power shall not interfere with the rights of the individual, unless such interference is necessary to promote the public welfare and the restrictions placed upon the individual's rights have a real, substantial, and direct relation to the object to be accomplished. *Adkins* v. *Childrens Hospital,* 261 U. S. 525; *Truax* v. *Corrigan,* 257 U. S. 312; *Yick Wo* v. *Hopkins,* 118 U. S. 356; *Mugler* v. *Kansas,* 123 U. S. 623.

By special leave of Court briefs of *amici curiae* were filed by *Mr. Louis Marshall* for the American Jewish Committee; *Mr. Wm. A. Williams,* for the North Pacific Union Conference of Seventh Day Adventists; *Messrs. Chas. H. Tuttle, Chas. E. Hotchkiss, Alexander J. Field,* and *Woodson P. Houghton,* for The Domestic and Foreign Missionary Society of the Protestant Episcopal Church in the United States.

MR. JUSTICE MCREYNOLDS delivered the opinion of the Court.

These appeals are from decrees, based upon undenied allegations, which granted preliminary orders restraining

appellants from threatening or attempting to enforce the Compulsory Education Act * adopted November 7, 1922, under the initiative provision of her Constitution by the voters of Oregon. Jud. Code, § 266. They present the same points of law; there are no controverted questions of fact. Rights said to be guaranteed by the federal Constitution were specially set up, and appropriate prayers asked for their protection.

The challenged Act, effective September 1, 1926, requires every parent, guardian or other person having control or charge or custody of a child between eight and sixteen years to send him "to a public school for the period of time a public school shall be held during the current year" in the district where the child resides; and failure so to do is declared a misdemeanor. There are

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Be it Enacted by the People of the State of Oregon:

Section 1. That Section 5259, Oregon Laws, be and the same is hereby amended so as to read as follows:

Sec. 5259. *Children Between the Ages of Eight and Sixteen Years*—Any parent, guardian or other person in the State of Oregon, having control or charge or custody of a child under the age of sixteen years and of the age of eight years or over at the commencement of a term of public school of the district in which said child resides, who shall fail or neglect or refuse to send such child to a public school for the period of time a public school shall be held during the current year in said district, shall be guilty of a misdemeanor and each day's failure to send such child to a public school shall constitute a separate offense; provided, that in the following cases, children shall not be required to attend public schools:

(a) *Children Physically Unable*—Any child who is abnormal, subnormal or physically unable to attend school.

(b) *Children Who Have Completed the Eighth Grade*—Any child who has completed the eighth grade, in accordance with the provisions of the state course of study.

(c) *Distance from school*—Children between the ages of eight and ten years, inclusive, whose place of residence is more than one and one-half miles, and children over ten years of age whose place of residence is more than three miles, by the nearest traveled road, from a public school; provided, however, that if transportation to and

exemptions—not specially important here—for children who are not normal, or who have completed the eighth grade, or who reside at considerable distances from any public school, or whose parents or guardians hold special permits from the County Superintendent. The manifest purpose is to compel general attendance at public schools by normal children, between eight and sixteen, who have not completed the eighth grade. And without doubt enforcement of the statute would seriously impair, perhaps destroy, the profitable features of appellees' business and greatly diminish the value of their property.

Appellee, the Society of Sisters, is an Oregon corporation, organized in 1880, with power to care for orphans, educate and instruct the youth, establish and maintain academies or schools, and acquire necessary real and per-

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from school is furnished by the school district, this exemption shall not apply.

(d) *Private Instruction*—Any child who is being taught for a like period of time by the parent or private teacher such subjects as are usually taught in the first eight years in the public school; but before such child can be taught by a parent or a private teacher, such parent or private teacher must receive written permission from the county superintendent, and such permission shall not extend longer than the end of the current school year. Such child must report to the county school superintendent or some person designated by him at least once every three months and take an examination in the work covered. If, after such examination, the county superintendent shall determine that such child is not being properly taught, then the county superintendent shall order the parent, guardian or other person, to send such child to the public school the remainder of the school year.

If any parent, guardian or other person having control or charge or custody of any child between the ages of eight and sixteen years, shall fail to comply with any provision of this section, he shall be guilty of a misdemeanor, and shall, on conviction thereof, be subject to a fine of not less than $5, nor more than $100, or to imprisonment in the county jail not less than two nor more than thirty days, or by both such fine and imprisonment in the discretion of the court.

This Act shall take effect and be and remain in force from and after the first day of September, 1926.

sonal property. It has long devoted its property and effort to the secular and religious education and care of children, and has acquired the valuable good will of many parents and guardians. It conducts interdependent primary and high schools and junior colleges, and maintains orphanages for the custody and control of children between eight and sixteen. In its primary schools many children between those ages are taught the subjects usually pursued in Oregon public schools during the first eight years. Systematic religious instruction and moral training according to the tenets of the Roman Catholic Church are also regularly provided. All courses of study, both temporal and religious, contemplate continuity of training under appellee's charge; the primary schools are essential to the system and the most profitable. It owns valuable buildings, especially constructed and equipped for school purposes. The business is remunerative—the annual income from primary schools exceeds thirty thousand dollars—and the successful conduct of this requires long time contracts with teachers and parents. The Compulsory Education Act of 1922 has already caused the withdrawal from its schools of children who would otherwise continue, and their income has steadily declined. The appellants, public officers, have proclaimed their purpose strictly to enforce the statute.

After setting out the above facts the Society's bill alleges that the enactment conflicts with the right of parents to choose schools where their children will receive appropriate mental and religious training, the right of the child to influence the parents' choice of a school, the right of schools and teachers therein to engage in a useful business or profession, and is accordingly repugnant to the Constitution and void. And, further, that unless enforcement of the measure is enjoined the corporation's business and property will suffer irreparable injury.

Appellee, Hill Military Academy, is a private corporation organized in 1908 under the laws of Oregon, engaged

in owning, operating and conducting for profit an elementary, college preparatory and military training school for boys between the ages of five and twenty-one years. The average attendance is one hundred, and the annual fees received for each student amount to some eight hundred dollars. The elementary department is divided into eight grades, as in the public schools; the college preparatory department has four grades, similar to those of the public high schools; the courses of study conform to the requirements of the State Board of Education. Military instruction and training are also given, under the supervision of an Army officer. It owns considerable real and personal property, some useful only for school purposes. The business and incident good will are very valuable. In order to conduct its affairs long time contracts must be made for supplies, equipment, teachers and pupils. Appellants, law officers of the State and County, have publicly announced that the Act of November 7, 1922, is valid and have declared their intention to enforce it. By reason of the statute and threat of enforcement appellee's business is being destroyed and its property depreciated; parents and guardians are refusing to make contracts for the future instruction of their sons, and some are being withdrawn.

The Academy's bill states the foregoing facts and then alleges that the challenged Act contravenes the corporation's rights guaranteed by the Fourteenth Amendment and that unless appellants are restrained from proclaiming its validity and threatening to enforce it irreparable injury will result. The prayer is for an appropriate injunction.

No answer was interposed in either cause, and after proper notices they were heard by three judges (Jud. Code § 266) on motions for preliminary injunctions upon the specifically alleged facts. The court ruled that the Fourteenth Amendment guaranteed appellees against the

deprivation of their property without due process of law consequent upon the unlawful interference by appellants with the free choice of patrons, present and prospective. It declared the right to conduct schools was property and that parents and guardians, as a part of their liberty, might direct the education of children by selecting reputable teachers and places. Also, that these schools were not unfit or harmful to the public, and that enforcement of the challenged statute would unlawfully deprive them of patronage and thereby destroy their owners' business and property. Finally, that the threats to enforce the Act would continue to cause irreparable injury; and the suits were not premature.

No question is raised concerning the power of the State reasonably to regulate all schools, to inspect, supervise and examine them, their teachers and pupils; to require that all children of proper age attend some school, that teachers shall be of good moral character and patriotic disposition, that certain studies plainly essential to good citizenship must be taught, and that nothing be taught which is manifestly inimical to the public welfare.

The inevitable practical result of enforcing the Act under consideration would be destruction of appellees' primary schools, and perhaps all other private primary schools for normal children within the State of Oregon. These parties are engaged in a kind of undertaking not inherently harmful, but long regarded as useful and meritorious. Certainly there is nothing in the present records to indicate that they have failed to discharge their obligations to patrons, students or the State. And there are no peculiar circumstances or present emergencies which demand extraordinary measures relative to primary education.

Under the doctrine of *Meyer* v. *Nebraska*, 262 U. S. 390, we think it entirely plain that the Act of 1922 unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of chil-

dren under their control. As often heretofore pointed out, rights guaranteed by the Constitution may not be abridged by legislation which has no reasonable relation to some purpose within the competency of the State. The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.

Appellees are corporations and therefore, it is said, they cannot claim for themselves the liberty which the Fourteenth Amendment guarantees. Accepted in the proper sense, this is true. *Northwestern Life Ins. Co.* v. *Riggs,* 203 U. S. 243, 255; *Western Turf Association* v. *Greenberg,* 204 U. S. 359, 363. But they have business and property for which they claim protection. These are threatened with destruction through the unwarranted compulsion which appellants are exercising over present and prospective patrons of their schools. And this court has gone very far to protect against loss threatened by such action. *Truax* v. *Raich,* 239 U. S. 33; *Truax* v. *Corrigan,* 257 U. S. 312; *Terrace* v. *Thompson,* 263 U. S. 197.

The courts of the State have not construed the Act, and we must determine its meaning for ourselves. Evidently it was expected to have general application and cannot be construed as though merely intended to amend the charters of certain private corporations, as in *Berea College* v. *Kentucky,* 211 U. S. 45. No argument in favor of such view has been advanced.

Generally it is entirely true, as urged by counsel, that no person in any business has such an interest in possible customers as to enable him to restrain exercise of proper power of the State upon the ground that he will be de-

prived of patronage. But the injunctions here sought are not against the exercise of any *proper* power. Plaintiffs asked protection against arbitrary, unreasonable and unlawful interference with their patrons and the consequent destruction of their business and property. Their interest is clear and immediate, within the rule approved in *Truax* v. *Raich*, *Truax* v. *Corrigan* and *Terrace* v. *Thompson*, *supra*, and many other cases where injunctions have issued to protect business enterprises against interference with the freedom of patrons or customers. *Hitchman Coal & Coke Co.* v. *Mitchell*, 245 U. S. 229; *Duplex Printing Press Co.* v. *Deering*, 254 U. S. 443; *American Steel Foundries* v. *Tri-City Central Trades Council*, 257 U. S. 184; *Nebraska District* v. *McKelvie*, 262 U. S. 404; *Truax* v. *Corrigan*, *supra*, and cases there cited.

The suits were not premature. The injury to appellees was present and very real, not a mere possibility in the remote future. If no relief had been possible prior to the effective date of the Act, the injury would have become irreparable. Prevention of impending injury by unlawful action is a well recognized function of courts of equity.

The decrees below are

Affirmed.